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No. 04-1282

Supreme Court, U.S.
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In The
Supreme Court of the United States

TIEN FU HSU, et al.,

Petitioners,

vs.

COUNTY OF CLARK,
a political subdivision of the State of Nevada,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Nevada

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Nevada Legislature statutorily declared more than a half-century ago that aviation hazards are a public nuisance and conferred police power authority on Respondent Clark County, Nevada (the "County") to enact airport zoning regulations that prevent their creation and thereby advance the public's health, safety, and general welfare without causing a compensable event. Since 1955, the County has exercised this authority on many occasions by adopting zoning regulations to promote development in which airport, residential, and commercial uses are all compatible. By their plain terms, the County's airport zoning regulations do not authorize aircraft to fly anywhere, do not instruct pilots where to fly, and do not cause either the permanent physical occupation or a lesser physical invasion of any airspace. Simply stated, these regulations do not mandate the public use of private property, but rather are examples of how government traditionally exercises its police power to control land uses in the public interest without incurring any duty to compensate affected property owners.

The question presented to the Nevada Supreme Court therefore was not the question presented by Petitioners to this Court. That question, which the Nevada Supreme Court correctly answered in accordance with this Court's well-settled takings jurisprudence, was the following:

> Whether land use regulations in the form of a height limitation, enacted pursuant to the police power in order to prevent an undisputed threat to public safety, effect a taking when they merely limit the use of private property?

It is this question that is now pending before the Court.

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JURISDICTION

Petitioners seek to invoke the Court's jurisdiction on two patently erroneous grounds. First, contrary to Petitioners' jurisdictional statement, the County has not adopted regulations that compel them to allow aircraft overflights of their property – the County has adopted traditional zoning height limitations, subject to a variance procedure, that control land uses without requiring or authorizing a physical invasion. Second, contrary to Petitioners' jurisdictional statement, the County did not enact these regulations to promote its own economic interest – the County did so pursuant to its police power to protect the public from the creation of aviation hazards. Given that Petitioners' justifications for a writ of certiorari are invalid, the Court should decline jurisdiction in this matter.

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES INVOLVED

The text of the following relevant constitutional provisions, statutes, and ordinances are reproduced in the Respondent's Appendix ("R.App."):

(1) United States Constitution, Fifth Amendment, at page 1;

(2) United States Constitution, Fourteenth Amendment, § 1, at page 1;

(3) Nevada Constitution, Article I, § 8(6), at pages 1-2;

(4) Nevada Revised Statutes ("NRS") 493.040, 493.050(1)(a), 497.030(1)(a), (b), and (c), and 497.040, at pages 2-3;

(5) 49 U.S.C. § 40102(a)(32), 49 U.S.C. § 40103(a)(1) and (2), at pages 3-4;

(6) Ordinance 728, Clark County, Nevada, at pages 5-22; and

(7) Ordinance 1221, Clark County, Nevada, at page 23-42.

STATEMENT OF THE CASE

The Petition is replete with significant factual errors and omissions. The following is an accurate and complete statement of the case.

Petitioners acquired the approximately 37 acres along Tropicana Avenue in Las Vegas, Nevada that comprise the subject property in 1992. The property is situated across the street from McCarran International Airport ("McCarran") and northwest of the major 19R/1L runway that has been used by jet aircraft since the 1960s and commercial aircraft even longer. Petitioners suggest that the property is the gateway to the "Las Vegas Strip," but it is actually one-half mile to the east and even farther from the hotel-casinos cited by them. *See* RT 2/27/01, at 91:20-22.

Like all other land throughout the County, for fifty years Petitioners' property has been subject to airport zoning regulations, which the County enacted pursuant to its police power statutorily conferred by the Nevada Legislature for the purpose of promoting the public's health, safety, and general welfare by preventing the

creation of aviation hazards. *See* Petitioners' Appendix ("Pet.App.") at 2; NRS 497.030(1)(a), (b), and (c); NRS 497.040. Petitioners mischaracterize the regulations as relating solely to McCarran and serving merely to advance its own economic interests as an airport owner and operator. Petitioners disregard that, in addition to McCarran, the regulations also relate to the federal government's Nellis Air Force Base as well as non-County owned airports. *See* R.App. at 7, 24; Clark County, Nev., Code ch. 20.12.

Petitioners also misconstrue the terms of the County's regulations. *See* R.App. at 5-42. No matter how many times Petitioners erroneously state otherwise, none of these regulations has authorized, invited, directed, or required aircraft to use their airspace or forced its dedication to public use. Aircraft would follow the same flight patterns regardless of whether the County adopted the regulations because they proceed at the direction of federal authorities. *See City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633-34 (1973). The regulations simply establish height limitations and other land use standards to protect the public from aviation hazards. The plain language of the regulations permits no other conclusion. *See* Pet.App. at 37-38. Petitioners apparently labor under the misconception that, if repeated often enough, their misstatements of the scope, purpose, and effect of the regulations will somehow become fact.

Petitioners specifically complain about two of the County's more recent airport zoning enactments – Ordinances 728 and 1221 (adopted in 1981 and 1990, respectively), which they acknowledge were valid exercises of the police power and did not deprive them of all economically viable use of the property. *See* Pet.App. at 3, 6-8, 39;

R.App. at 55, 70. These regulations placed all property within the County into at least one of four zones (runway approach, transition, horizontal, and conical) according to its relationship to the end of a runway. The height limitations were most burdensome within the runway approach zone and least burdensome within the conical zone. None of Petitioners' property lies within a runway approach zone. *See* Pet.App. at 2-3, 6.

Since 1974, at least a portion of Petitioners' property has been within the transition zone for McCarran's 19R/1L runway, which is adjacent to the runway approach zone. *See* Pet.App. at 3. Petitioners incorrectly suggest that the County intentionally expanded the transition zone to include more of the property in order to provide "extra maneuvering room" for certain aircraft. *See* Petition ("Pet.") at 6. The County never made such a determination. Instead, subsequently enacted regulations of general applicability, coupled with expansion of the 19R/1L runway, placed more of the property within that zone. *See* Pet.App. at 6.

Rather than the runaway truck ramp described by Petitioners, the transition zone is the functional equivalent of a setback, which this Court has long recognized government may impose through the non-compensable exercise of its police power to address public safety and other concerns. *See Gorieb v. Fox*, 274 U.S. 603 (1927). Transition zone height limitations range from 35 to 150 feet. *See* Pet.App. at 3, 4, 6; R.App. at 17-18, 34-35. The property's location within the transition zone did not subject it to height limitations that were more restrictive than the 35-foot limitation established by its primary zoning for trailer court use, did not impair its existing

uses, and did not require Petitioners to relocate. *See* Pet.App. at 6, 32; R.App. 18-19, 39.

Petitioners' assertion that the County's regulations have reduced their property to "uses like warehouse, cemetery, or golf course" is false. *See* Pet. at 6-7. The property indisputably has more significant economically viable uses. When Petitioners acquired the property, trailer court and lounge businesses were being operated there. *See* Pet.App. at 11. Petitioners have continued these uses and started a billboard business that they also still conduct. *See id.* at 7. While these businesses annually generate substantial revenue for them, Petitioners never intended, planned, or otherwise pursued development for more lucrative uses. *See id.* at 11, 48. Evidence confirms, however, that Petitioners could construct a building to a height of at least 240 feet under current airport zoning standards without causing an aviation hazard. *See id.* at 9-10.

Petitioners mistakenly assume that the imaginary transition surface imposed an impenetrable ceiling on their property's vertical development. Petitioners overlook the procedure, created by the County's regulations, which authorizes variances from height limitations that would preclude nonconforming future uses. *See* R.App. at 19-20, 39-41. The regulations therefore do not bar penetrations of the transition zone, but rather serve to trigger an analysis by the Federal Aviation Administration ("FAA") as to whether a development plan would constitute an aviation hazard. *See id.* at 35-41; Pet.App. at 18. When the FAA determines that a plan would not pose such a hazard, the County generally authorizes the development regardless of the height limitations. The County has granted such

variances for properties located in the transition and other zones. *See* Pet.App. at 10, 46-47.

Because Petitioners have not submitted a meaningful development plan or variance application, the County necessarily has never denied their use of any airspace. *See* Pet.App. at 22-23. Petitioners' assertion that the County has "prohibited" them from using 60 percent of their useable airspace therefore is untrue. *See* Pet. at 5. Until Petitioners apply and receive a final decision from the County, no one will ever know how much of the airspace is available for use.

Despite their failure to apply, Petitioners alleged that the height limitations imposed by Ordinances 728 and 1221 had taken their airspace. *See* R.App. at 55, 70. Prior to trial, the trial court granted Petitioners' summary judgment motion and held the County liable for a per se physical taking of the airspace as a matter of law. *See* Pet.App. at 52-64. No evidence was proffered that even one aircraft had traversed the airspace, but the trial court concluded that the County had effected the type of physical taking recognized in *United States v. Causby*, 328 U.S. 256 (1946), based on unsubstantiated findings that aircraft "go through the airspace" and that the airspace "is necessary and used by the airport."[1] *See* Pet.App. at 61-64. In the process, the trial court misconstrued the plain language of the County's regulations and applicable takings law.

The trial court also made erroneous evidentiary rulings, ignored in the Petition, which affected the conduct

[1] Petitioners previously dismissed their takings claim based on the effects of aircraft overflights. *See* Pet.App. at 8, 31.

and outcome of the trial that was held solely on the issue of compensation. Significantly, the trial court excluded evidence of preexisting airport zoning height limitations and the zoning procedures relevant to the development of Petitioners' property, including evidence relating to the available variance procedure. *See* Pet.App. at 18. The trial court required the County's expert appraiser to value the property in the "before condition" (i.e., before the taking mistakenly found) using the invalid hypothetical assumption that there were no height limitations of any kind that impacted land use. *See id.* at 18, 19. Petitioners overlook that opinions expressed by the County's expert appraiser on value and other issues were the result of these trial court errors. *See id.* at 19, 49-50; Pet. at 7.

Petitioners cite various legal conclusions and factual findings made by the trial court in entering summary judgment on the issue of liability, but these determinations were subject to de novo review under state law. *See Kern v. Nevada Ins. Guar. Ass'n*, 856 P.2d 1390, 1392 (Nev. 1993). During that review, the Nevada Supreme Court found that virtually all of the trial court's legal and factual conclusions were wrong, including the ones relied on by Petitioners.[2]

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[2] The Nevada Supreme Court determined, for example, that the trial court should have held that the testimony of the County's aviation expert relied on by Petitioners did not establish a physical invasion or occupation, that the airport zoning regulations did not create an avigation easement because they merely established height limitations, that there had not been a deprivation of air rights because no meaningful development plan or variance application had ever been submitted, and that evidence of preexisting height limitations and zoning procedures was admissible. *See* Pet.App. at 31-32, 37-38, 41-50.

The Nevada Supreme Court rectified these errors by rejecting Petitioners' per se physical takings theory as incompatible with governing law, finding that the regulatory takings principles promulgated in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), provided the controlling authority for the resolution of this matter, and concluding that Petitioners' claim was not ripe for adjudication. *See* Pet.App. at 40-50. Even though the Nevada Supreme Court acted in accordance with well-settled takings jurisprudence, Petitioners have sought review by this Court.

SUMMARY OF ARGUMENT

Because they have no viable legal or factual basis on which to request a writ of certiorari, Petitioners resort to misconstructions of law and misstatements of fact in an attempt to convince the Court that this matter is worthy of its attention. Not only do the mischaracterizations that permeate the Petition portray a fictional case that is unsuitable for this Court's consideration, review is unjustified even under the real circumstances of this case.

At issue here is whether a traditional zoning height limitation enacted pursuant to the police power has effected a taking. This common issue is resolved, as the Nevada Supreme Court determined, by reference to established ripeness and regulatory takings principles that confirm there has been no taking.

Petitioners are essentially asking this Court to overrule *Penn Central*, 438 U.S. at 104, and adopt a new category of per se takings rules that eviscerate the police power. The Court should summarily reject this request as

unnecessary, inappropriate, and against public policy. The decision of every state court of last resort that has considered the question presented during the past twenty years validates the Nevada Supreme Court's holding. Contrary to the Petitioners' assertions, no conflict exists that requires resolution by the Court. Per se takings principles have no application to this ordinary land use regulation case where there has been no government-mandated physical invasion. The Petition therefore should be denied in its entirety.

REASONS FOR DENYING THE WRIT

I. The Petition Advances A Classic Unripe Regulatory Takings Claim That Is Inappropriate For The Court's Review

Petitioners never submitted even one meaningful development plan or invoked the variance procedure available under the County's airport zoning regulations. Instead, Petitioners erroneously assumed that the regulations prohibited penetrations of the imaginary transition surface and, on this basis, asserted a taking of the airspace above that surface. This failure to apply, which was not futile as the Nevada Supreme Court determined, made Petitioners' takings claim unripe for adjudication. *See* Pet.App. at 22-23, 41-49; *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 352 n.8 (1986). Ripeness is lacking when the possibility remains "open" that development will be permitted, as it does here given that the County has discretion to approve any proposal and the evidence established that Petitioners could build a structure to a height of at least 240 feet. *See* Pet. at 9-10; *MacDonald*, 477 U.S. at 352-53.

No justiciable controversy exists regarding the application of the County's regulations to Petitioners' property. A final decision on the nature and extent of land uses permitted by a challenged regulation is required before jurisdiction exists to adjudicate a takings claim. *See, e.g., Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 339-40 (2002). In other words, "a landowner may not establish a taking before a land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation." *See Palazzolo v. Rhode Island*, 533 U.S. 606, 620-21 (2001). There is no final decision for ripeness purposes without at least a rejected development plan and variance application. *See id.*; *Williamson County Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 187-89 (1985).

No court can ascertain whether the County's regulations have "gone too far," and thereby effected the taking claimed, because it is speculative as to whether they will ultimately prevent Petitioners from developing their property in any way. The Petition accordingly is inappropriate for consideration on its merits.

II. Petitioners Fabricate A "Conflict" Among The State Courts That Does Not Exist

There is no conflict of any kind among state courts as to whether airport zoning height regulations effect a per se physical taking of property. Like the Nevada Supreme Court, every state court of last resort that has considered this issue during the past twenty years has found that such regulations, which limit building heights without requiring the public use of private property, constitute valid, non-compensable exercises of the police power.

It is unmistakable that this Court's opinion in *Penn Central*, which began the modern era of takings jurisprudence, is the reason for this uniformity of state court decisions. *Penn Central* instructs that when government has allegedly deprived landowners of the beneficial use of their air rights, as Petitioners contend has occurred here, a regulatory approach characterized by "essentially ad hoc, factual inquiries," rather than the application of per se rules, provides the proper analytical framework for determining takings liability. *See Penn Central*, 438 U.S. at 107, 124, 138. The Nevada Supreme Court recognized that *Penn Central* controlled and therefore appropriately chose to align itself with the other modern state courts, as well as several earlier state courts, that have considered this issue.[3] *See* Pet.App. at 36-37, 40.

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[3] *See infra* note 8 and accompanying text; *Fitzgarrald v. City of Iowa City*, 492 N.W.2d 659, 666 (Iowa 1992) (no taking where property lost market value, but still had economically viable uses, because of airport height regulations), *cert. denied*, 508 U.S. 911 (1993); *Cheyenne Airport Bd. v. Rogers*, 707 P.2d 717, 721-26 (Wyo. 1985) (airport height regulations adopted to avert the creation of aviation hazards did not take an airspace easement), *appeal dismissed*, 476 U.S. 1110 (1986); *Kimberlin v. City of Topeka*, 710 P.2d 682, 687-88 (Kan. 1985) (zoning ordinance establishing height and use restrictions to promote airport safety was a non-compensable exercise of the police power); *Manchester Airport Auth. v. Romano*, 412 A.2d 1020, 1021 (N.H. 1980) (whether airport zoning regulations effected a taking was ascertained through a factual analysis rather than as a matter of law); *Baggett v. City of Montgomery*, 160 So.2d 6, 7-10 (Ala. 1964) (zoning ordinance imposing height limitations near an airport to protect against aviation hazards was valid); *Harrell's Candy Kitchen, Inc. v. Sarasota-Manatee Airport Auth.*, 111 So.2d 439, 444-45 (Fla. 1959) (regulating heights near airports was a valid exercise of the police power that promoted orderly development, the stabilization of land values, and public safety); *Patzau v. New Jersey Dep't of Transp.*, 638 A.2d 866, 870-72 (N.J. Super. App. Div. 1994) (controlling land use near an airport is not a taking; distinguishing *Yara Eng'g Corp. v. City of Newark*, 40 A.2d 559 (N.J. 1945),

(Continued on following page)

Petitioners primarily rely, by contrast, on outdated, pre-*Penn Central* state court decisions that have no applicability.[4] Unlike this case, Petitioners' authorities involve property located in airport approach zones, property subject to ongoing aircraft overflights (no evidence exists of even one overflight here), property that sustained harm to its existing uses, or property that lost all economically viable use and value. Petitioners' authorities also do not broadly hold that all airport zoning height regulations permit the physical invasion of airspace, as Petitioners inaccurately suggest, but rather have outcomes that are specific to and determined by their facts, which are markedly different than the facts of this case. Even the most

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which Petitioners rely on here, because the regulation deprived the property located within the airport approach and turning zones of all value), *cert. denied*, 649 A.2d 1288 (N.J. 1994); *La Salle Nat'l Bank v. County of Cook*, 340 N.E.2d 79, 89 (Ill.App. 1975) (airport height regulations did not take private property for public use; "the need to protect the public from air hazards is a proper exercise of police power"); *see also Northwest Props. v. Outagamie County*, 589 N.W.2d 683, 686-87 (Wis.App. 1998) (ordinance that protected aerial approaches to an airport by "regulating, restricting and determining the use, location, height, number of stories and size of buildings and structures and objects of natural growth in the [airport's] vicinity" was constitutional), *review denied*, 590 N.W.2d 490 (Wis. 1999); *Aeronautics Comm'n of Indiana v. State ex rel. Emmis Broad. Corp.*, 440 N.E.2d 700, 704, 706 (Ind.App. 1982) (regulating structural heights near airports to "protect the safety and welfare of persons and property in the air and on the ground by ensuring the navigable air space overlying the state is maintained in an unobstructed condition" was valid). Modern case law makes clear that there is no taking regardless of the zone in which property is located because airport zoning height limitations are a non-compensable exercise of the police power.

[4] In *Rogers v. City of Cheyenne*, 490 U.S. 1066 (1989) (mem.), the Court denied a petition for a writ of certiorari where the petitioner purported to show the same state court conflict while presenting essentially the same question for review. The petition is available at 1989 WL 1174284.

cursory review of these cases reveals that their holdings are not as Petitioners represent.[5]

The only two state court cases referenced by Petitioners that were issued since *Penn Central* are equally unavailing to their cause. Petitioners cite just one post-*Penn Central* opinion issued by a state court of last resort which is factually inapposite and remarkable solely because the government enterprise theory of takings liability recognized there has never been adopted elsewhere in airport zoning cases and has long since been repudiated by its primary proponent.[6] The other post-*Penn*

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[5] *See infra* notes 6 through 9 and accompanying text; *Indiana Toll Rd. Comm'n v. Jankovich*, 193 N.E.2d 237 (Ind. 1963) (a taking where a toll road had been constructed "in such a manner as to cross the inner area approach zone" of a runway; the maximum structural height permitted on the property was 18.5 feet and the toll road penetrated the approach zone by 6.5 feet), *cert. dismissed*, 379 U.S. 487 (1965); *Jackson Mun. Airport Auth. v. Evans*, 191 So.2d 126 (Miss. 1966) (a taking where government demanded the topping or removal of trees that grew within an airport approach zone because they were an obstruction); *Roark v. City of Caldwell*, 394 P.2d 641 (Idaho 1964) (a taking where zoning to protect a runway approach limited portions of land to agricultural uses); *Yara Eng'g Corp. v. City of Newark*, 40 A.2d 559 (N.J. 1945) (a taking where zoning, which the state legislature had not authorized, restricted development and left land with nominal value); *Ackerman v. Port of Seattle*, 348 P.2d 664 (Wash. 1960) (a taking based on continuing and frequent low overflights); *see also United States v. 48.10 Acres of Land*, 144 F.Supp. 258 (S.D.N.Y. 1956) (direct condemnation of avigation easement where glide angle plane passed over land).

[6] In that case, *McShane v. City of Faribault*, 292 N.W.2d 253 (Minn. 1980), the Minnesota Supreme Court found a taking based on a government enterprise theory of liability where regulations substantially limited development beneath the airport approach by prohibiting above-ground structural uses on a portion of the land and by imposing significant height, density, and use restrictions on the remainder of the land. This theory has its origins in an article published over forty years ago. *See* Joseph L. Sax, *Takings And The Police Power*, 74 Yale L.J. 36 (1964). Soon thereafter, the author acknowledged that this theory is

(Continued on following page)

Central opinion cited by Petitioners, which is also uninformative as a result of its unrelated facts, is inconsequential because it is merely the decision of an intermediate state appellate court.[7] *See* Sup. Ct. R. 10(b).

Petitioners' misplaced reliance on the decisions of other intermediate state appellate courts confirms the absence of a state court conflict in two additional ways. First, Petitioners cite a factually distinguishable opinion of an intermediate Ohio appellate court while ignoring a later Ohio Supreme Court holding that airport zoning height limitations were a constitutional exercise of the police power that did not result in a taking.[8] Second, Petitioners cite two factually distinguishable opinions of intermediate California appellate courts while disregarding that another such court found that airport zoning

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inapplicable to takings claims like the one asserted by Petitioners. *See* Joseph L. Sax, *Takings, Private Property And Public Rights*, 81 Yale L.J. 149, 150-151 & n.5, 161-167 (1971).

[7] *Kentucky Airport Zoning Comm'n v. Kentucky Power Co.*, 651 S.W.2d 121 (Ky.App. 1983) (a taking where a power company was ordered to mark and relocate electric power lines, which preexisted the nearby airports, for purposes of aviation safety).

[8] *Compare Village of Willoughby Hills v. Corrigan*, 278 N.E.2d 658 (Ohio 1972) (denying a takings claim by the owners of land located within a transition zone that was subject to a 70-foot height limitation while rejecting the notion that government could only achieve the purposes of airport zoning through its eminent domain powers), *cert. denied*, 409 U.S. 919 (1972), *with Hageman v. Bd. of Trustees of Wayne Township*, 251 N.E.2d 507 (Ohio App. 1969) (a taking where zoning established a corridor for use by military aircraft during takeoff and landing and regulated building heights, population density, and lighting within the corridor).

regulations did not effect a taking.[9] Thus, like Petitioners' other authorities, these cases establish no conflict.

Petitioners' mischaracterization of the state of the law to suggest that a conflict exists among the state courts of last resort is unavailing. There is no conflict. Consequently, the Court has no reason to review this matter.

III. This Matter Involves Traditional Height Limitations Enacted Pursuant To The Police Power And Not A Permanent Physical Invasion Or Occupation.

A. The County's Airport Zoning Regulations Have Established Traditional Height Limitations Through A Non-Compensable Exercise Of The Police Power – *Penn Central Transportation Co. v. City of New York*

The Petitioners' fundamental erroneous premise is that the County's regulations authorize aircraft to invade their airspace or reserve it for public use. By their plain terms, the County's regulations do nothing more than control land use through height limitations and other standards to prevent the creation of aviation hazards,

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[9] *Compare Peacock v. County of Sacramento*, 77 Cal.Rptr. 391 (Cal.App. 1969) (a taking where the subject land "had no practical value or beneficial use" after its development had been frozen by government regulation), *and Sneed v. County of Riverside*, 32 Cal.Rptr. 318 (Cal.App. 1963) (holding, without resolving the issue of liability, that the complaint stated a claim for the taking of an avigation easement within the glide angle of clear and approach zones and where frequent low overflights had been alleged), both cited by Petitioners, *with Smith v. County of Santa Barbara*, 52 Cal.Rptr. 292 (Cal.App. 1966) (no taking where police power regulation rezoned land near an airport from its purported highest and best use to an allegedly less valuable use).

which the Nevada Legislature long ago declared are public nuisances. *See* R.App. at 5-42; NRS 497.030(1)(a); *see also Harris v. City of Wichita*, 862 F.Supp. 287, 289-291 (D.Kan. 1994) (airport zoning regulations did not authorize aircraft overflights, and therefore did not cause a physical invasion or per se taking, but rather restricted land uses to reduce risks to the public), *aff'd*, 74 F.3d 1249 (10th Cir. 1996). No provision of the regulations compels Petitioners to accept a physical invasion or occupation. The regulations are like any other ordinary land use planning tool, employed in the public interest through the police power, that does not result in a compensable taking.[10] *See, e.g., Agins v. City of Tiburon*, 447 U.S. 255 (1980).

Petitioners are trying to negate the plain terms of the regulations, which defeat their Petition, by characterizing them as though they have imposed a servitude on their property. Such an effort was rejected in *Penn Central*, where the Court pointed out that cases like *Welch v. Swasey*, 214 U.S. 91 (1909), which held that height limitations are not takings, "illustrate the fallacy [of the] contention that a 'taking' must be found to have occurred

[10] Petitioners misleadingly and incorrectly suggest that the County conceded using their airspace when it argued in the courts below that their claim failed under a prescriptive easement theory. The County never stated or implied that there was any evidence of a physical invasion of the airspace. None exists in the record. This argument served to demonstrate that Petitioners' takings claim was not merely unfounded – it also was not timely alleged because the prescriptive period is five years. *See Jordan v. Bailey*, 944 P.2d 828, 832 (Nev. 1997). The regulations relied on by Petitioners took effect more than five years before they alleged their claim, meaning that the prescriptive period had already expired under their erroneous theory that the County had mandated a public "use" of their airspace. Thus, when considered in the proper context, the County's argument reinforces the Petition's lack of merit.

whenever the land-use restriction may be characterized as imposing a 'servitude' on the claimant's parcel." *See Penn Central*, 438 U.S. at 130 n.27. *Penn Central* confirmed that government may regulate airspace, such as through zoning limitations on vertical development, without compensation. *See id.* at 107, 124, 138. That is precisely what the County has done here, as the Nevada Supreme Court recognized.

Petitioners cannot cite any provision of the County's regulations that authorizes aircraft to invade their airspace or reserves such airspace for public use. Conspicuously absent from the Petition is any discussion of the terms that purportedly grant such authorization or make such a reservation. Petitioners also have not provided the Court with the text of the regulations. *See* Sup. Ct. R. 14(1)(f). These omissions are not surprising because the regulations do not support Petitioners' proposition. *See* R.App. at 5-42.

Penn Central disposes of the Petition because the landmark preservation law at issue there had the same effect as the County's regulations in dispute here – limiting the private use of certain airspace in the public interest while permitting gainful use of the remainder of the property, including the unimpaired continuation of existing economically viable uses. *See Penn Central*, 438 U.S. at 135. Compensation is unavailable even when regulatory limitations deprive property of its most beneficial use. *See id.* at 125. Hence, the County's regulations are, like the law examined in *Penn Central*, traditional regulatory

limitations on land use that do not constitute a taking.[11] Even further undermining the Petition is that the extent of the limitation is unknown here, making the takings claims unripe, because Petitioners never submitted a meaningful development plan.

Petitioners disregard that, according to *Penn Central*, air rights are not a separate segment of property for takings purposes. *See Penn Central*, 438 U.S. at 130. Rather, the "parcel as a whole" is the relevant property interest. *See id.* at 130-31; *Tahoe-Sierra*, 535 U.S. at 326-27. Land use regulations may "place limits on the property owner's right to make profitable use of some segments of his property," including the airspace, without causing a compensable event. *See Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497-98, 500 (1987). The effect of the regulations challenged here is no different.[12]

Petitioners' suggestion that a separate constitutional standard governs height limitations that prevent the

[11] Petitioners attempt to bolster their erroneous takings theory by misrepresenting, through selective citations, the analysis set forth in a recent article about this case by a leading takings law scholar, Jan G. Laitos, which was published before the Nevada Supreme Court's decision. *See* Pet. at 4, 18. Professor Laitos emphatically concluded that Petitioners' legal theory is wrong, stating that "a *per se* physical invasion approach should not be used to test the takings validity of the Clark County height restriction." *See* Jan G. Laitos, *Height Restrictions Near Airports: Physical Takings, Regulatory Takings, or Police Power Exercises?*, 55 Land Use Law & Zoning Digest 7 (Sept. 2003). According to Professor Laitos, the "*Penn Central* default rule" provides "the correct analysis for a reviewing court to use in a case involving a height restriction near an airport runway, as in the Nevada case." *See id.*

[12] Petitioners also disregard that their property rights are limited by a state statutory right of flight, [*see* NRS 493.040 and 493.050(1)(a)], and the federal navigational servitude. *See* 49 U.S.C. § 40102(a)(32); 49 U.S.C. § 40103(a)(1) and (2).

creation of aviation hazards is without merit. The non-compensable exercise of the police power is essential "to protect the lives, health, morals, comfort and general welfare of the people." *See Manigault v. Springs*, 199 U.S. 473, 480 (1905). The County exercised this authority in pursuit of the "highest of public interests – the prevention of death and injury." *See First English Evangelical Lutheran Church v. County of Los Angeles*, 258 Cal.Rptr. 893, 904 (Cal.App. 1989), *cert. denied*, 493 U.S. 1056 (1990). This Court even observed as early as *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926), that government may regulate building heights to minimize dangers to the public.

Air travel is now an integral part of the modern world, as pointed out in *Causby*, 328 U.S. at 260-61, and it would be incongruous for per se takings liability to result where government acts to protect the public from related hazards when, as in *Penn Central* and countless other cases, "lesser public interests have been deemed sufficient to justify zoning which diminishes – without compensation – the value of individual properties." *See First English*, 258 Cal.Rptr. at 904. Height limitations imposed for such a purpose are at least the constitutional equivalent of, and therefore warrant the same treatment as, height limitations commonly imposed without compensation to facilitate orderly community development.

The general rule is that a government regulation that "forbids the private use of certain airspace *does not* constitute a categorical taking." *See Tahoe-Sierra*, 535 U.S. at 323 (emphasis added; citation omitted). That rule, which governs here, precludes the Petitioners' novel per se takings theory and mandates the denial of their Petition.

B. The Traditional Height Limitations Imposed By The County's Airport Zoning Regulations Are The Functional Equivalent Of A Non-Compensable Setback – *Gorieb v. Fox*

The constitutionality of setbacks for land use planning is indisputable. In *Gorieb*, 274 U.S. at 603, the Court affirmed the government's use of its police power to require a building setback as a development condition without compensation. The Court recognized that traditional horizontal setbacks promote the public's health, safety, and general welfare by, among other things, establishing a buffer zone between public roadways and private buildings to facilitate the safe operation of motor vehicles. *See id.* at 609. Other courts have made similar observations. *See, e.g., In re Letourneau*, 726 A.2d 31, 35 (Vt. 1998); *Pace v. Bd. of Adjustment*, 492 So.2d 412, 415 (Fla.App. 1986), *review denied*, 501 So.2d 1283 (Fla. 1987).

The height limitations established by the County's regulations serve this identical purpose. The regulations do not merely advance aesthetic goals, which *Gorieb* makes clear is sufficient to preclude takings liability. *See Gorieb*, 274 U.S. at 608-10. Rather, the regulations promote the more important objective of minimizing the public's risk of bodily harm and property damage by creating a safety buffer zone between designated flight paths and structures on the ground. The regulations therefore function exactly like a horizontal setback. Neither invites nor directs the public use of private property. The only difference between them, which has no legal significance, is that the regulations are applied vertically in the sky. Because these horizontal and vertical setbacks are functionally indistinguishable, the same constitutional

standards must apply to both. *Gorieb* dictates that the County's vertical setback requirements are a non-compensable exercise of the police power.

C. The County's Airport Zoning Regulations Are A Non-Compensable Exercise Of The Police Power To Prevent Public Nuisances – *Keystone Bituminous Coal Association v. DeBenedictis*

Takings liability traditionally does not result when government limits private property rights to protect against the establishment of a public nuisance. Directly on point is *Keystone*, 480 U.S. at 470, because the County's regulations are identical in their effect and purpose to the subsidence act considered there.

Both *Keystone* and this case involve regulatory limitations on the use of private property to protect the public. At issue in *Keystone* was a state law that required mine owners to leave a certain amount of underground coal in place in order to safeguard the public by preventing subsidence that could significantly damage the property rights of surface owners. *See id.* at 474-75. Similarly, in this case, the County's regulations require landowners to leave a certain amount of airspace vacant in order to safeguard the public by preventing aviation hazards that could result in substantial bodily injury and property damage. Because of these striking parallels, the constitutional analysis undertaken in *Keystone* is mandated here.

Rejecting the notion that the subsidence act had physically appropriated private property, *Keystone* recognized that the relevant inquiry was whether there had been a regulatory taking. *See Keystone*, 480 U.S. at 488

n.18. The Court conducted a *Penn Central* analysis and found no taking even though the challenged law, like the County's regulations here, precluded one owner (the underground coal owner) from using a portion of its property (the coal) in order to benefit the property interests of another owner (the surface land owner). *See id.* at 501-02.

According to *Keystone*, no taking results where, as in this case, the government limits private land uses that have the potential to cause public harm even when they are not intrinsically noxious or unreasonable. *See id.* at 485-93. The rationale underlying this rule is that "'all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community' and the Takings Clause did not transform that principle to one that requires compensation whenever the State asserts its power to enforce it." *See id.* at 491 (quoting *Mugler v. Kansas*, 123 U.S. 623, 665 (1887)).

Although *Keystone* is the most pertinent example, the Court has a long history of upholding regulations that limit or destroy real property rights while protecting against public nuisances. *See, e.g., Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962); *Miller v. Schoene*, 276 U.S. 272 (1928); *Hadacheck v. Sebastian*, 239 U.S. 394 (1915); *Reinman v. City of Little Rock*, 237 U.S. 171 (1915); *Mugler*, 123 U.S. at 623. Like *Keystone*, these cases recognize that all landowners, including Petitioners, have no property right to establish a public nuisance.

Ignoring this inherent limitation on their property rights, Petitioners have asserted the same type of claim alleged in *Keystone*, arguing that the County's regulatory action has restricted the use of one segment of their

property – airspace – for the public benefit of facilitating safe air travel. *Keystone* confirms that such a claim is inappropriate for per se rules, but rather requires evaluation under the multifactor *Penn Central* approach. The per se physical takings theory advanced by Petitioners therefore has no merit.

D. A Per Se Taking Does Not Result Where, As Here, The Government Has Exercised Its Police Power To Protect The Public And Has Not Invited A Permanent Physical Invasion

The per se takings doctrine is inapplicable when government exercised its police power, as the County did in this case, to regulate private land uses that posed a public safety hazard. Per se takings liability is inappropriate under these circumstances because government cannot afford to regulate by purchase on matters of such public importance. *See Tahoe-Sierra*, 535 U.S. at 335. This fundamental principle has been the cornerstone of the Court's takings jurisprudence for nearly a century. *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922).

The key prerequisite to a per se physical taking – the government's invitation to the public to invade and permanently occupy private property – is absent here. The County's regulations impose height limitations and other standards to prevent the creation of aviation hazards. Nothing more. None of their provisions invites aircraft to invade any airspace.

For this reason, the per se physical takings cases relied on by Petitioners are inapposite. *See* Pet. at 17-18. The controls on land use imposed by the County are in no

way analogous to circumstances in which government compelled private property owners to: (1) acquiesce in the public's use of a private marina, as in *Kaiser Aetna v. United States*, 444 U.S. 164 (1979); (2) permit a cable television company to affix its facilities to a private building, as in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); (3) grant an easement across private land for beach access by the public when such action would not ameliorate problems anticipated by the proposed redevelopment, as in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); or (4) convey a pedestrian/bicycle pathway as a condition for permitting private store expansion when the dedication would not rectify any problem created by the modified land use, as in *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Significantly, in each of these cases, government intended for and invited the public to invade private property on a permanent basis.

That is not the situation in this case, however, where the County's intent is that aircraft remain on their designated flight paths and never use the safety buffer zone established by its regulations.[13] It therefore is not surprising that none of the per se physical takings cases cited by Petitioners considered the question presented to the Nevada Supreme Court, which is whether land use regulations enacted pursuant to the police power result in a

[13] Even if an unintended use of private airspace occurs, which would be unrelated to the County's regulations under any circumstances, it would not amount to a per se physical taking. In general, "unlike a government invasion of the surface land itself, an invasion of airspace above surface land does not *per se* constitute a taking." *See Brown v. United States*, 73 F.3d 1100, 1104 (Fed.Cir. 1996); *City of Austin v. Travis County Landfill Co.*, 73 S.W.3d 234, 242 (Tex.), *cert. denied*, 537 U.S. 950 (2002).

taking when they preclude the use of private property in a manner detrimental to the public's health, safety, or general welfare.

Petitioners' charge that the Nevada Supreme Court fell into a "label affixation trap" is misplaced. *See* Pet. at 16. Ironically, it is Petitioners who have fallen into that trap. The facts of this case simply do not support the application of the per se takings principles proposed by them. *See Harris*, 862 F.Supp. at 291, 293-94 (*Loretto*, *Nollan*, and *Dolan* are irrelevant to whether airport zoning regulations effect a taking).

Recognizing that the *Penn Central* approach governs here, the Nevada Supreme Court obeyed this Court's instructions and rejected Petitioners' request that it indiscriminately expand the per se takings doctrine to this obvious regulatory case. *See Tahoe-Sierra*, 535 U.S. at 342 ("the interest in 'fairness and justice' will be best served by relying on the familiar *Penn Central* approach when deciding cases like this, rather than by attempting to craft a new categorical rule").

IV. The Court Should Reject Petitioners' Invitation To Revisit *Causby* And *Griggs* Because Its Modern Regulatory Takings Jurisprudence Resolves This Traditional Zoning Matter

This case is not the appropriate vehicle by which to reexamine the physical takings principles promulgated in *Causby*, 328 U.S. at 256, and *Griggs v. County of Allegheny*, 369 U.S. 84 (1962). Neither *Causby* nor *Griggs* considered the question addressed by the Nevada Supreme Court – whether a zoning height limitation imposed to protect the public from the creation of aviation hazards is

a non-compensable exercise of the police power or a taking without compensation. Petitioners even concede this point. *See* Pet. at 23.

Both *Causby* and *Griggs* instead involved the extraordinary situation in which aircraft overflights were so low and so frequent that their effects destroyed the existing uses of the land below.[14] Not only are such rare circumstances absent here, where existing land uses remain intact and other substantial economically viable uses are available, there is no evidence of even one overflight of the subject property. In other words, as the Nevada Supreme Court determined, *Causby* and *Griggs* are inapposite to this traditional height limitation case where overflights are not at issue.

Petitioners are mistaken in suggesting that the County has evaded a duty imposed by *Causby* and *Griggs*, [pet. at 24] – "Neither Griggs nor Causby assist directly in determining whether zoning ordinances promulgated pursuant to statutory authority can 'take' in the same manner." *See La Salle Nat'l Bank*, 340 N.E.2d at 88. Petitioners ignore that this Court has held before and since *Causby* and *Griggs* that regulations limiting vertical development, like the County's regulations, do not effect a taking. *See Penn Central*, 438 U.S. at 107, 124, 138; *Welch*, 214 U.S. at 107. Petitioners' misunderstanding of this principle is exemplified by their misguided notion that a Federal Circuit opinion in an inapposite aircraft overflight

[14] Petitioners' suggestion that state courts consistently find takings liability in aircraft overflight cases is wrong. *See, e.g., Fitzgarrald*, 492 N.W.2d at 663-65 (rejecting physical invasion claim).

case states the "rule" that governs here. *See* Pet. at 18-19 (quoting *Brown*, 73 F.3d at 1103).

The so-called "updated approach" requested by Petitioners therefore is unnecessary. *See* Pet. at 23. This Court's modern takings jurisprudence, particularly *Penn Central* and its progeny, has provided more than ample guidance in how to resolve takings claims based on airport zoning height limitations. The proof is that every state court of last resort that has considered this issue during the past twenty years has reached the same conclusion as the Nevada Supreme Court – such height limitations do not effect a per se physical taking, but rather are appropriately examined under regulatory takings principles. *Tahoe-Sierra* is the most recent confirmation that the "default rule" applies in these cases, requiring a "fact specific inquiry" based on the multifactor *Penn Central* test, to determine whether a taking has occurred. *See Tahoe-Sierra*, 535 U.S. at 332, 341-42.

In sum, no "drastic split of authority" exists on this issue, as Petitioners attempt to convince the Court through their pattern of misinformation. *See* Pet. at 23. There is no split at all. Airspace does not enjoy special property status, but rather is subject to government regulation like any other property interest. On this basis, no further instruction from the Court is required at this time.

CONCLUSION

For the foregoing reasons, the County respectfully requests that the Court deny the Petition for Writ of Certiorari in its entirety.

Respectfully submitted,

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CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES INVOLVED

United States Constitution, Fifth Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Fourteenth Amendment, § 1:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Nevada Constitution, Article I, § 8(6):

"Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public

peril, in which case compensation shall be afterward made."

NRS 493.040:

"The ownership of the space above the waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in NRS 493.050."

NRS 493.050(1)(a):

"1. Flight in aircraft over lands and waters of this state is lawful:

(a) Unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water is put by the owner."

NRS 497.030(1)(a), (b), and (c):

"1. It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, takeoff and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

(a) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question.

(b) That it is therefore necessary in the interest of the public health, public safety and general welfare that

the creation or establishment of airport hazards be prevented.

(c) That this should be accomplished, to the extent legally possible, by exercise of the police power without compensation."

NRS 497.040:

"In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer and enforce, under the police power and in the manner and upon which the conditions prescribed in this chapter, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, prohibit those land uses which could cause a hazard to air traffic and regulate and restrict the height to which structures and trees may be erected or allowed to grow."

49 U.S.C. § 40102(a)(32):

"In this part –

'navigable airspace' means airspace above the minimum altitudes of flight prescribed by regulations under this subpart and subpart III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft."

49 U.S.C. § 40103(a)(1):

"The United States Government has exclusive sovereignty of airspace of the United States."

49 U.S.C. § 40103(a)(2):

"A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals."

Bill No. 12-16-80-2

SUMMARY – An Ordinance adopting a new Chapter 29.50 to limit the height of objects around all public use airports within Clark County, Nevada, and repealing the existing Chapter 29.50.

ORDINANCE NO. – 728
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 29 OF THE CLARK COUNTY CODE BY ADDING THERETO A NEW CHAPTER DESIGNATED AS 29.50 WHICH REGULATES AND RESTRICTS THE HEIGHT OF STRUCTURES AND OTHERWISE REGULATES THE USE OF THE PROPERTY WITHIN THE JURISDICTION OF CLARK COUNTY, NEVADA AND IN THE VICINITY OF ALL PUBLIC USE AIRPORTS BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEREOF; PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS USED HEREIN; REFERRING TO THE MC CARRAN INTERNATIONAL AIRPORT AIRSPACE ZONING MAP WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE; REPEALING THE EXISTING CHAPTER 29.50 OF THE CLARK COUNTY CODE; PROVIDING FOR ENFORCEMENT AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Legislative Findings. It is hereby found that an obstruction has the potential for endangering the lives and property of users of any public use Airport, and property or occupants of land within Clark

County, Nevada, in the vicinity of these Airports; that an obstruction may affect existing and future instrument approach minimums of any public use Airport; that an obstruction may reduce the size of the areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility and capacity of these Airports and the public investment therein. Accordingly, it is declared:

(A) That the establishment of an obstruction has the potential of being a public nuisance and may injure the region served by McCarran International Airport or any other public use Airport;

(B) That it is necessary in the interest of the public health, public safety, and general welfare that the establishment of obstructions that are a hazard to air navigation be prevented; and

(C) That the prevention of these obstructions should be accomplished to the extent legally possible by the exercise of the police power without compensation.

SECTION 2. That the present Chapter 29.50 of the Clark County Code is hereby repealed in its entirety.

SECTION 3. That a new Chapter 29.50 be adopted as follows:

CHAPTER 29.50

PUBLIC USE AIRPORT HEIGHT ZONING RESTRICTIONS

Sections:

29.50.010 Definitions
29.50.020 Airport zones
29.50.030 Airport zone height limitations

29.50.040 Use restrictions
29.50.050 Nonconforming uses
29.50.060 Variances

29.50.010 DEFINITIONS. As used in this Ordinance, unless the context otherwise requires;

1. PUBLIC USE AIRPORT – means any of the following airports in Clark County, Nevada: McCarran International Airport, Overton Airport, Searchlight Airport, Jean Airport, No. Las Vegas Airport, Boulder City Airport, Echo Bay Airport, Henderson Sky Harbor Airport, Three Corners Airport, Hidden Hills Airport.

2. AIRPORT ELEVATIONS – The highest point of an airport's usable landing area measured in feet above mean sea level.

3. APPROACH SURFACE – A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 29.50.030 of this Ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.

4. APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES – These zones are set forth in Section 29.50.020 of this Ordinance.

5. CONICAL SURFACE – A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(6) HAZARD TO AIR NAVIGATION – An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

(7) HEIGHT – For the purpose of determining the height limits in all zones set forth in this Ordinance and/or shown on an airspace zoning map, the datum shall be mean sea level elevation unless otherwise specified.

(8) HORIZONTAL SURFACE – A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

(9) LARGER THAN UTILITY RUNWAY – A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet power aircraft.

(10) NONCONFORMING USE – Any pre-existing structure or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.

(11) NONPRECISION INSTRUMENT RUNWAY – A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

(12) OBSTRUCTION – Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 29.50.030 of this Ordinance.

(13) PERSON – An individual, firm, partnership, corporation, company, association, joint stock association,

or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.

(14) PRECISION INSTRUMENT RUNWAY – A runway having an existing instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan.

(15) PRIMARY SURFACE – A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway, when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface varies with the type of runway and its approach and is set forth in Section 29.50.020. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

(16) RUNWAY – a defined area on an airport prepared for landing and take-off of aircraft along its length.

(17) STRUCTURE – An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, signs and overhead transmission lines.

(18) TRANSITIONAL SURFACES – These surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional

surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90 degree angles to the extended runway centerline.

(19) TREE – Any object of natural growth

(20) UTILITY RUNWAY – A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

(21) VISUAL RUNWAY – A runway intended solely for the operation of aircraft using visual approach procedures.

29.50.020 AIRPORT ZONES. In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the airspace above the height of 35 feet above the surface of the land, lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the portions of any public use Airport lying within the jurisdiction of Clark County, Nevada. Such zones for McCarran International Airport are shown on the McCarran International Airport Airspace Zoning Map consisting of three (3) sheets, prepared by the Clark County Airport Engineering Department dated September 10, 1979, a copy of which is on file at the County Clerk's office and which is hereby incorporated by reference and made a part hereof. An area located in more than one (1) of the following zones is considered to be only in the zone with the more restrictive height limitations. The various zones are hereby established and defined as follows:

(A) Runway Approach Zones

(1) McCarran International Airport

(a) Utility Runway Visual Approach Zone – Runways 19R, 01L.

The inner edge of this approach zone coincides with the width of the primary surface and is 250 feet wide. The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(b) Runway Larger than Utility Visual Approach Zones – Runways O1R, 07L, 07R.

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(c) Precision Instrument Runway Approach Zones – Runways 19L, 25R, 25L

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(2) All Other Public Use Airports

(a) Utility Runway Visual Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface 250 feet wide.

The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(b) Utility Runway Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(c) Runway Larger Than Utility Visual Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(d) Runway Larger Than Utility with A Visibility Minimum Greater than 3/4 Mile Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(e) Runway Larger Than Utility With A Visibility Minimum As Low as 3/4 Mile Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

f. Precision Instrument Runway Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(B) Transition Zones

Transition zones are established adjacent to each runway and approach zone and are the areas beneath the transitional surfaces. Transition zones extend outward from the primary surface and shall slope upward and outward one (1) foot vertically for each seven (7) feet horizontally to the point where they intersect the surface of the horizontal zone. Transition zones are also established adjacent to approach zones for the entire length of the approach zones. Such transition zones flare symetrically with either side of the runway approach zones from the base of such zones, and slope upward and outward at the rate of one (1) foot vertically for each seven (7) feet horizontally to the points where they intersect the surface of the horizontal and conical zones. Transition zones are also established adjacent to a precision instrument approach zone where it projects through and beyond the limits of the conical zone, extending a distance of 5,000 feet measured horizontally from the edge of the

instrument approach zone at right angles to the runway centerline.

(C) Horizontal Zone

The horizontal zone is the area beneath the horizontal surface and is established by swinging arcs of 5,000 feet radii for all runways designated utility or visual and 10,000 feet radii for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal surface is located at a height of 150 feet above the established airport elevation. The horizontal zone does not include the approach zones or transition zones.

(D) Conical Zone

The conical zone lies beneath the conical surface established as the area commencing at the periphery of the horizontal zone and extending upward one (1) foot in height for every twenty (20) feet of horizontal distance outward therefore a distance of 4,000 feet. The conical zone does not include the instrument approach zones or transition zones.

29.50.030 AIRPORT ZONE HEIGHT LIMITATIONS

Except as otherwise provided in this Ordinance, no structure shall be erected, alerted, or maintained in any zone created by this Ordinance to a height in excess of the applicable height limit herein established for such zone. However, nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure to a height up to 35 feet above the surface of the land in any zone created by this Ordinance. Further, no building or structure shall be erected within the zones unless the Federal Aviation Administration (FAA) of the United

States of America and the Director of Aviation of Clark County shall have determined that the building or structure is so situated or marked that it would not be a hazard. All construction within the various height zones shall be subject to the property owners' signing an avigation easement. Such applicable height limitations are hereby established for each of the zones in question as follows:

(A) Runway Approach Zones

(1) McCarran International Airport

(a) Utility Runway Visual Approach Zone – Runways 19R, 01L

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

(b) Runway Larger than Utility Visual Approach Zones – Runways 01R, 07L, 07R

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

(c) Precision Instrument Runway Approach Zones – Runway 19L, 25R, 25L.

Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to

an additional horizontal distance of 40,000 feet along the extended runway centerline.

(2) All other Public Use Airports

(a) Utility Runway Visual Approach Zone

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

(b) Utility Runway Nonprecision Instrument Approach Zone

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

(c) Runway Larger than Utility Visual Approach Zone

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

(d) Runway Larger than Utility With a Visibility Minimum Greater than 3/4 Mile Nonprecision Instrument Approach Zone

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

(e) Runway Larger than Utility With a Visibility Minimum As Low as 3/4 Mile Nonprecision Instrument Approach Zone.

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

(f) Precision Instrument Runway Approach Zone

Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

(B) Transition Zones

Slope one (1) foot vertically for each seven (7) feet horizontally beginning at the sides of and at the same elevation as the primary surface and approach surface, and extending to a height of 150 feet above the airport elevation. In addition to the foregoing, there are established height limits of one (1) foot vertically for each seven (7) feet horizontally beginning at the sides of and the same elevation as all approach zone surfaces for the entire length of all approach zone surfaces and extending upward and outward to the points where they intersect the horizontal and conical surfaces. Where the precision instrument runway approach zone projects beyond the conical zone surface, a height limit of one (1) foot for each seven (7) feet of horizontal distance shall be maintained beginning at the sides of and the same elevation as the approach

surface, and extending a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway centerline.

(C) Horizontal Zone

One hundred fifty (150) feet above the established Airport elevation.

(D) Conical Zone

One (1) foot vertical height for each twenty (20) feet of horizontal distance beginning at the periphery of the horizontal zone and extending a horizontal distance of 4,000 feet to a height of 350 feet above the airport elevation.

29.50.040 USE RESTRICTIONS

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

29.50.050 NONCONFORMING USES

(A) Regulations Not Retroactive

The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure not

conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

(B) Marking and Lighting

Notwithstanding the preceding provisions of this Section, the owner of any existing nonconforming structure may be required to install, operate, and maintain thereon such markers and lights as may be deemed necessary by the Director of Aviation to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction.

29.50.060 VARIANCES

(A) Future Uses

Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, or otherwise use his property in a manner which would constitute a violation of these regulations, may apply to the Clark County Planning Commission for a variance from these regulations. Such variances will be allowed where a literal application or enforcement of these regulations would result in practical difficulty or unnecessary hardship, and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of these regulations and of Chapter 29.66 of the Clark County Code. Any such variance allowed may be subject to any reasonable conditions that the Clark County Planning Commission or Board of County Commissioners may deem

necessary to effectuate the purposes of Chapter 29.66 of the Clark County Code, including, but not limited to, the condition to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Board of Clark County Commissioners, this condition may be modified to require the owner to permit Clark County, at its own expense, to install, operate, and maintain the necessary markings and lights.

(B) Existing Uses

No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto or than it is when application for a permit is made.

(C) Nonconforming Uses Abandoned or Destroyed

Whenever a nonconforming structure, as set forth in the provisions of Chapter 29.45, has been abandoned or more than 50 percent (50%) torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure to exceed the applicable height limit or otherwise deviate from the zoning regulations.

SECTION 4: Enforcement and Penalties.

The penalties and enforcement provisions set forth in Chapter 29.74 of the Clark County Code shall govern the provisions of this Chapter.

SECTION 5: If any section of this Ordinance or portion thereof is for any reason held invalid or unconstitutional by

any court of competent jurisdiction, such holding shall not invalidate the remaining portions of this Ordinance.

SECTION 6: All Ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 7: This Ordinance shall take effect and be in force from and after its passage and publication thereof by title only, together with the names of the County Commissioners voting for or against the passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED ON THE 16th DAY OF December, 1980

PROPOSED BY: Thalia Dondero

PASSED ON THE 20th DAY OF January, 1981

VOTE: AYES Robert N. Broadbent
David Canter
Manuel Cortez
Thalia Dondero
Jack R. Petitti
Richard J. Ronzone

NAYS None

ABSTAINING None

ABSENT Woodrow Wilson

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

BY: /s/ Manuel Cortez
Chairman, MANUEL CORTEZ

ATTEST:

/s/ Loretta Bowman
LORETTA BOWMAN, County Clerk

This Ordinance shall be in force and effect from and after the 3rd day of February, 1981.

APPROVED AS TO FORM:
ROBERT J. MILLER, DISTRICT ATTORNEY

By: /s/ Thomas R. Severns
Deputy, THOMAS R. SEVERNS

CLARK COUNTY NEVADA
JEAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF
CLARK COUNTY CLERK

FEB 5 11 09 AM 81

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1352 1311148

RETURN TO
COUNTY CLERK

COUNTY CLERK'S OFFICE
COUNTY COMMISSIONER
DIVISION
VALLEY BANK PLAZA
11th FLOOR
LAS VEGAS, NEVADA

[Bracketed] material is that portion being deleted
Underlined material is that portion being added

BILL NO. 6-20-90-2

SUMMARY – An Ordinance to amend Chapter 29.50 to enlarge the area included within the regulations governing airport airspace zoning and height restrictions and to adopt new airport airspace zoning maps for McCarran International Airport, North Las Vegas Airport, Overton Airport and Jean Airport.

ORDINANCE NO. 1221
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 29, CHAPTER 29.50. PUBLIC USE AIRPORT HEIGHT ZONING RESTRICTIONS BY ADOPTING SPECIFIC AIRSPACE ZONING MAPS FOR MCCARRAN INTERNATIONAL, NORTH LAS VEGAS, OVERTON AND THE JEAN AIRPORTS, TO PROVIDE THAT NOTICE MUST BE GIVEN TO THE FAA PRIOR TO CONSTRUCTION WITHIN THE PROVIDED HEIGHT STANDARDS, TO MODIFY THE LANGUAGE PROVIDING FOR VARIANCE PROCEDURES AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

29.50.010 Definitions. As used in this chapter, unless the context otherwise requires or the definition is inconsistent with a definition by the Federal Aviation Administration:

(1) "Public use airport" means any of the following airports in Clark County, Nevada: McCarran International Airport, Overton Airport, Searchlight Airport, Jean Airport, No. Las Vegas Airport, Boulder City Airport, Echo Bay Airport, Henderson Sky Harbor Airport, Three Corners Airport, Hidden Hills Airport.

(2) "Airport elevations" mean the highest point of an airport's usable landing area measured in feet above mean sea level.

[(3) "Approach surface" means a surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as approach zone height limitation slope set forth in Section 29.50.030. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

(4) "Approach, transitional, horizontal, and conical zones" are as set forth in Section 29.50.020.

(5) "Conical Surface" means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of four thousand feet.]

[(6)] (3) "Hazard to air navigation" means an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of navigable airspace.

[(7)] **(4)** "Height." For the purpose of determining the height limits in all zones set forth in this chaper and/or shown on an airspace zoning map, the datum shall be mean sea level elevation unless otherwise specified.

[(8) "Horizontal surface" means a horizontal plane one hundred fifty feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

(9) "Larger than utility runway" means a runway that is constructed for and intended to be used by propeller driven aircraft of greater than twelve thousand five hundred pounds maximum gross weight and jet power aircraft.]

[(10)] **(5)** "Nonconforming use" means any preexisting structure or use of land which is inconsistent with the provisions of this chapter or an amendment thereto.

[(11) "Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.]

[(12)] **(6)** "Obstruction" means any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 29.50.030.

[(13)] **(7)** "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.

[(14) "Precision instrument runway" means a runway having an existing instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on the Official Airport Airspace Zoning Maps.

(15) "Primary surface" means a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each and of that runway, when the runway has no specially prepared hard surface or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface varies with the type of runway and its approach and is set forth in Section 29.50.020. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.]

[(16)] **(8)** "Runway" means a defined area on an airport prepared for landing and takeoff of aircraft along its length.

(9) "Runway Protection Zone" (formerly "Runway Clear Zone") means a trapezoidal area at ground level, for the purpose of protecting the safety of approaches and keeping the area clear of the congregation of people.

[(18)] **(10)** "Structure" means an object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, signs and overhead transmission lines.

[(19) "Transitional surfaces" mean surfaces which extend outward at ninety degree angles to the runway

centerline, and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of five thousand feet measured horizontally from the edge of the approach surface and at ninety degree angles to the extended runway centerline.]

[(20)] **(11)** "Tree" means any object of natural growth.

[(21) "Utility runway" means a runway that is constructed for and intended to be used by propeller driven aircraft of twelve thousand five hundred pounds maximum gross weight and less.

(22) "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures. (Ord. 728 & 3 (part), 1981)]

29.50.020 Airport zones. In order to carry out the provisions of this chapter, there are created and established certain zones which include all of the airspace above the height of thirty-five feet above the surface of the land, lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces, as they apply to the portions of any public use airport lying within the jurisdiction of Clark County, Nevada. Such zones for [McCarran International Airport] **each public use airport** are shown on the [McCarran International] **Official** Airport Airspace Zoning Map [consisting of three sheets, prepared by the Clark County Airport Engineering Department dated September 10, 1979,] **for each public**

use airport as adopted by specific map as put forth in §29.50.050. [a copy of which is on file at the county clerk's office and which is hereby incorporated by reference and made a part hereof.] An area located in more than one of the [following] airport zones is considered to be only in the zone with the more restrictve height limitations.

[(A) Runway Approach Zones.

(1) McCarran International Airport

(a) Utility Runway Visual Approach Zone Runways 19R, 01L. The inner edge of this approach zone coincides with the width of the primary surface and is two hundred fifty feet wide. The approach zone expands outward uniformly to a width of one thousand two hundred fifty feet at a horizontal distance of five thousand feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(b) Runway Larger than Utility Visual Approach Zones – Runways 01L, 07L, 07R. The inner edge of this approach zone coincides with the width of the primary surface and is one thousand feet wide. The approach zone expands outward uniformly to a width of one thousand five hundred feet at a horizontal distance of five thousand feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(c) Precision Instrument Runway Approach Zones Runways 19L, 25R, 25L. The inner edge of this approach zone coincides with the width of the primary surface and is one thousand feet wide. The approach zone expands outward uniformly to a width of sixteen thousand feet at a horizontal distance of fifty thousand feet from the

primary surface. Its centerline is the continuation of the centerline of the runway.

(2) All Other Public Use Airports

(a) Utility Runway Visual Approach Zone. The inner edge of this approach zone coincides with the width of the primary surface two hundred fifty feet wide. The approach zone expands outward uniformly to a width of one thousand two hundred fifty feet at a horizontal distance of five thousand feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(b) Utility Runway Nonprecision Instrument Approach Zone. The inner edge of this approach zone coincides with the width of the primary surface and is five hundred feet wide. The approach zone expands outward uniformly to a width of two thousand feet at a horizontal distance five thousand feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(c) Runway Larger than Utility Visual Approach Zone. The inner edge of this approach zone coincides with the width of the primary surface and is five hundred feet wide. The approach zone expands outward uniformly to a width of one thousand five hundred feet at a horizontal distance of five thousand feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(d) Runway Larger than Utility with a Visibility minimum Greater than Three-fourths Mile Nonprecision Instrument approach Zone. The inner edge of this approach zone coincides with the width of the

primary surface and is five hundred feet wide. The approach zone expands outward uniformly to a width of three thousand five hundred feet at a horizontal distance of ten thousand feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(e) Runway Larger than Utility with a Visibility Minimum as Low as Three-fourths Mile Nonprecision Instrument Approach Zone. The inner edge of this approach zone coincides with the width of the primary surface and is one thousand feet wide. The approach zone expands outward uniformly to a width of four thousand feet at a horizontal distance of ten thousand from the primary surface. Its centerline is the continuation of the centerline of the runway.

(f) Precision Instrument Runway Approach Zone. The inner edge of this approach zone coincides with the width of the primary surface and is one thousand feet wide. The approach zone expands outward uniformly to a width of sixteen thousand feet at a horizontal distance fof fifty thousand feet from the primary surface. It centerline is the continuation of the centerline of the runway.

(B) Transition Zones. Transition zones are established adjacent to each runway and approach zone and are the areas beneath the transitional surfaces. Transition zones extend out-ward from the primary surface and shall slope upward and outward one foot vertically for each seven feet horizontally to the point where they intersect the surface of the horizontal zone. Transition zones are also established adjacent to approach zones for the entire length of the approach zones. Such transition zones flare symmetrically with either side of the runway approach zones from the base of such zones, and slope upward and

outward at the rate of one foot vertically for each seven feet horizontally to the points where they intersect the surface of the horizontal and conical zones. Transition zones are also established adjacent to a precision instrument approach zone where it projects through and beyond the limits of the conical zone, extending a distance of five thousand feet measured horizontally from the edge of the instrument approach zone at right angles to the runway centerline.

(C) Horizontal Zone. The horizontal zone is the area beneath the horizontal surface and is established by swinging arcs of five thousand feet radii for all runways designated utility or visual and ten thousand feed radii for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal surface is located at a height of one hundred fifty feet above the established airport elevation. The horizontal zone does not include the approach zones or transition zones.

(D) Conical Zone. The conical zone lies beneath the conical surface established as the area commencing at the periphery of the horizontal zone and extending upward one foot in height for every twenty feet of horizontal distance outward therefore for a distance of four thousand feet to a height of three hundred and fifty (350) feet above the airport elevation. The conical zone does not include the instrument approach zones or transition zones. (Ord. 728 & 3 (part), 1980)]

29.50.030 Airport zone height limitations. (A) Except as otherwise provided in this chapter, no structure shall be erected, [alerted] **altered**, or maintained in any

airport zone [created by this chapter to a height] **that would violate the height limitations depicted in the maps adopted herewith** [in excess of the applicable height limit established in this chapter for such zones]. However, nothing in this chapter shall be construed as prohibiting the construction or maintenance of any structure to a height up to thirty-five feet above the surface of the land in any zone created by this chapter. [Further, no Building or structure shall be erected within the zones unless the Federal Aviation Administration (FAA) of the United States of America and the director of aviation of the county shall have determined that the building or structure is so situated or marked that it would not be a hazard) Any building or structure constructed within the zones shall be situated or marked as approved by the Federal Aviation Administration and the Clark County Department of Aviation so that it does not constitute a hazard as defined in Section 29.50.010(3). All construction within the various height zones shall be subject to the property owner's signing an avigation easement. [Such applicable height limitations are established for each of the zones in question as follows:

(A) Runway Approach Zones.

(1) McCarran International Airport.

(a) Utility Runway Visual Approach Zone – Runways 19R, 01L. Slopes twenty feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand feet along the extended runway centerline.

(b) Runway Larger than Utility Visual Approach Zones – Runways 01R, 07L, 07R. Slopes twenty

feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand feet along the extended runway centerline.

(c) Precision Instrument Runway Approach Zones Runway 19L, 25R, 25L. Slopes fifty feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of ten thousand feet along the extended runway centerline; thence slopes upward forty feet horizontally for each foot vertically to an additional horizontal distance of forty thousand feet along the extended runway centerline.

(2) All Other Public Use Airports.

(a) Utility Runway visual Approach Zone. Slopes twenty feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand feet along the extended runway centerline.

(b) Utility Runway Nonprecision Instrument approach Zone. Slopes twenty feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand feet along the extended runway centerline.

(c) Runway Larger than Utility Visual Approach Zone. Slopes twenty feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand feet along the extended runway centerline.

(d) Runway Larger than Utility with a visibility Minimum Greater than Three-fourths Mile Nonprecision Instrument Approach Zone. Slopes thirty-four feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of ten thousand feet along the extended runway centerline.

(e) Runway Larger than Utility with a Visibility Minimum As Low as Three-fourths Mile Nonprecision Instrument Approach Zone. Slopes thirty-four feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of ten thousand feet along the extended runway centerline.

(f) Precision Instrument Runway Approach Zone. Slopes fifty feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of ten thousand feet along the extended runway centerline; thence slopes upward forty feet horizontally for each foot vertically to an additional horizontal distance of forth thousand feet along the extended runway centerline.

(B) Transition Zones. Slopes one foot vertically for each seven feet horizontally beginning at the sides of and at the same elevation as the primary surface and approach surface, and extending to a height of one hundred fifty feet above the airport elevation. In addition to the foregoing, there are established height limits of one foot vertically for each seven feet horizontally beginning a the sides of and the same elevation as all approach zone surfaces for the entire length of all approach zone surfaces and extending upward and outward to the points where

they intersect the horizontal and conical surfaces. Where the precision instrument runway approach zone projects beyond the conical zone surface, a height limit of one foot for each seven feet of horizontal distance shall be maintained beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of five thousand feet measured at ninety degree angles to the extended runway centerline.

(C) Horizontal Zone. One hundred fifty feet above the established airport elevation.

(D) Conical Zone. One foot vertical height for each twenty feet of horizontal distance beginning at the periphery of the horizontal zone and extending a horizontal distance of four thousand feet to a height of three hundred fifty feet above the airport elevation. (Ord. 728 &3 (part), 1980)]

29.50.040 Notices of Construction or Alteration.

(A) Any person proposing construction or alteration in the environs of any public use airport or airport operated by the United States Armed Services shall notify the Chief, Air Traffic Division, FAA Regional Office having jurisdiction over the area within which the construction or alteration will be located not less than thirty days before the commencement of the construction or alteration if such construction or alteration exceeds any of the following height standards:

(1) Two hundred (200) feet above the ground level at its site.

(2) The plane of an imaginary surface extending outward and upward at a slope of 100 to 1 for a

horizontal distance of 20,000 feet from the nearest point of the nearest runway of any airport subject to the provisions of this chapter.

(3) For highways, railroads and other traverse ways for mobile objects; if construction or alteration is of greater height than the standards set forth in subparagraphs (1) or (2) hereinbefore after their height has been adjusted upward for the appropriate traverse way as follows:

(a) For interstate highways: 17 feet

(b) For any other public roadways: 15 feet

(c) For any private road: 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater.

(d) For any railroad: 23 feet

(e) For a waterway or any otherunspecified traverse way: the height of the highest mobile object that would normally use the traverse way.

(4) When requested by the FAA, any construction or alteration that would be in an instrument approach area and available information indicates the height might exceed any FAA obstruction standard.

Any notice required by this section shall be on FAA Form 7460-1, available from the regional offices of the Federal Aviation Administration.

(B) Construction or Alteration not requiring notice. Notice to the FAA is not required for construction or alteration of any of the following:

(1) Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographical features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation.

(2) Any antenna structure of 20 feet or less in height except one that would increase the height of another antenna structure.

(3) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device, of a type approved by the Administrator, or an appropriate military service on military airports, the location and height of which is fixed by its functional purpose.

(4) Any construction or alteration for which notice is required by any other FAA regulation.

29.50.050 Official Airport Airspace Zoning Maps. The following official airport airspace zoning maps for specific public use airports lying within the jurisdiction of Clark County, Nevada, as adopted by ordinance of The Board of Clark County Commissioners, are on file at the office of the

County Clerk and hereby incorporated by reference and made a part hereof:

(A) **The McCarran International Airport Official Airspace Zoning Map, consisting of five (5) sheets,prepared by the Clark County Airport Engineering Department dated** July 18, 1990 **and adopted by Ordinance Number** 1221 .

(B) **The North Las Vegas Air Terminal Official Airspace Zoning Map, consisting of one (1) sheet, prepared by the Clark County Airport Engineering Department dated** July 18, 1990 **and adopted by Ordinance Number** 1221 .

(C) **The Overton Airport Official Airspace Zoning Map, consisting of one (1) sheet, prepared by the Clark County Airport Engineering Department dated** July 18, 1990 **and adopted by Ordinance Number** 1221 .

(D) **The Jean Airport Official Airspace Zoning Map consisting of one (1) sheet, prepared by the Clark County Airport Engineering Department dated** July 18, 1990 **and adopted by Ordinance Number** 1221 .

29.50.060 Use restrictions. Notwithstanding any other provisions of this chapter, no use may be made of land or water within any zone established by this chapter in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or

otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport. (Ord. 728 & 3 (part), 1980)

29.50.070 Nonconforming uses. (A) Regulations Not Retroactive. The regulations prescribed by this chapter shall not be construed to require the removal, lowering, or other change or alteration of any structure not conforming to the regulations as of the effective date of this chapter, or otherwise interfere with the continuance of a nonconforming use. Nothing contained in this chapter shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this chapter, and is diligently prosecuted.

(B) Marking and Lighting. Notwithstanding the preceding provisions of this section, the owner of any existing nonconforming structure may be required to install, operate, and maintain thereon such markers and lights as may be deemed necessary by the director of aviation to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. (Ord. 728 & 3 (part), 1980)

29.50.080 Variances. (A) Future Uses. Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, or otherwise use his property in a manner which would constitute a violation of these regulations, may apply to the county planning commission for a variance from these regulations. Such variances [will] **may** be allowed where a literal application or enforcement of these regulations would result in practical difficulty or unnecessary hardship, and the relief granted would not be contrary to the public interest, but

would do substantial justice and be in accordance with the spirit of these regulations [and of Chapter 29.66]. Any such variance allowed may be subject to any reasonable conditions that the county planning commission or board of county commissioners may deem necessary to effectuate the purposes of [Chapter 29.66,] Title 29 including, but not limited to, the condition to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the board of county commissioners, this condition may be modified to require the owner to permit the county, at its own expense, to install, operate, and maintain the necessary markings and lights. Variances pursuant to this chapter shall be considered under the procedures put forth under Section 29.66 of this title with the exception that the applicant shall notify the FAA Regional Office of the application prior to the time of submission of the variance application and that the Planning Commissions' action concerning the variance application shall be considered advisory only, with all variances being referred to the Board of County Commissioners for final disposition.

(B) Existing Uses. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this chapter or any amendments thereto, or than it is when application for a permit is made.

(C) Nonconforming Uses Abandoned or Destroyed. Whenever a nonconforming structure, as set forth in the provisions of Chapter 29.45, has been abandoned or more than fifty percent torn down, physically deteriorated, or

decayed, no permit shall be granted that would allow such structure to exceed the applicable height limit or otherwise deviate from the zoning regulations.

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the 20th day of June, 1990.

PROPOSED BY Manuel J. Cortez &
William U. Pearson

PASSED on the 18th day of July, 1990.

VOTE:

AYES: Jay Bingham
Paul J. Christensen
Manuel J. Cortez
Thalia M. Dondero
Karen Hayes

NAYS: None

ABSTAINING: None

ABSENT: William U. Pearson

Bruce L. Woodbury

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By /s/ Bruce L. Woodbury
Chairman

ATTEST:

/s/ Loretta Bowman
LORETTA BOWMAN, County Clerk

This ordinance shall be in force and effect from and after the 1st day of August, 1990.

AANS-A
KERMITT L. WATERS
Nevada Bar #2571
438 E. Sahara Avenue
Las Vegas, Nevada 89104
(702) 733-8877
Attorney for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

COUNTY OF CLARK, a political subdivision of the State of Nevada,

Plaintiff,

vs.

TIEN FU HSU; UNITED TITLE OF NEVADA, formerly known as CHICAGO TITLE AGENCY OF LAS VEGAS, a Nevada corporation; TIERRA VENTURE, a general partnership; JOHN DOE X; JANE DOE I through JANE DOE X; DOE CORPORATION I through DOE CORPORATION X; and DOE PARTNERSHIP I through DOE PARTNERSHIP X,

Defendants, /

CASE NO. A332441
DEPT. NO. VII
DOCKET NO. "P"

COUNTY OF CLARK, a political subdivision of the State of Nevada,

Plaintiff,

vs.

LISA SU FAMILY TRUST, LISA SU TRUSTEE, PETER B. LIAO, COAST FED SERVICES, COAST SAVINGS AND LOAN ASSOCIATION, CHICAGO TITLE AGENCY OF LAS VEGAS, INC., GUARDIAN BANK, TITLE INSURANCE AND TRUST COMPANY, GERALD JENKINS and R. JOANN JENKINS, L.V. LAND CO., and L.A. LAND CO.,

Defendants. /

CASE NO. A333961
DEPT. NO. VII
DOCKET NO. "P"

DEFENDANTS' THIRD AMENDED ANSWER AND COUNTERCLAIM

(Filed Oct. 14, 1997)

DEFENDANTS THIRD AMENDED ANSWER AND COUNTERCLAIM TO PLAINTIFF'S AMENDED COMPLAINT IN CASE NO. A332441, COUNTY V. TIEN FU HSU, ET AL.,

Defendants, WESTPARK INC, a corporation of which Tien Fu Hsu is President and is the sole owner of all of the stock, and TIEN FU HSU, by and through their attorney, KERMITT L. WATERS, in answer to Plaintiffs Amended Complaint, admits, denies and alleges as follows:

I.

Defendants admit the allegations contained in paragraphs 1, 2, 3, 4,6, 7, 14, 15 and 17.

II

Defendants deny the allegations contained in paragraphs 5, 8, 10 and 16.

III

As to paragraphs 6 and 11, defendants admit the allegations contained therein, except for the parts setting forth the description of the property

IV

Defendants admit the allegations contained in paragraph 12, but deny that this allegation correctly depicts the extent of the total project, and further deny that plaintiff has fully described all of the property being taken or damages to the remainder property.

V

Defendants admit the allegations contained in paragraph 13, but affirmatively allege that unreasonable delay on the part of the plaintiff as to the widening of Tropicana Avenue resulted in a de facto taking of defendant's property within six months of May 5, 1992, the date on which the Board of County Commissioners authorized the condemnation of the subject property.

COUNTERCLAIM

Defendants, WESTPARK INC, a corporation of which Tien Fu Hsu is President and is the sole owner of all of the stock, and TIEN FU HSU, by and through their attorney,

KERMITT L. WATERS, allege the following counterclaims against the plaintiff, Clark County:

1. That Defendants, WESTPARK INC, a corporation of which Tien Fu Hsu is President and is the sole owner of all of the stock, and TIEN FU HSU are the owners of certain property which is the subject matter of this action and which is located in Clark County, Nevada, which is more fully described below:

ORIGINAL PARCEL BEFORE THE TAKE

PARCEL I

THE EAST 330.00 FEET OF THE WEST 660.00 FEET OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B.& M.

EXCEPT THE INTEREST IN THE SOUTH 50.00 FEET OF SAID LAND AS CONVEYED TO STATE OF NEVADA BY DEED RECORDED MAY 18, 1959 IN BOOK 198 OF OFFICIAL RECORDS, AS DOCUMENT NO. 1060956.

FURTHER EXCEPTING THEREFROM THAT PORTION OF SAID EAST HALF (E ½) OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, INCLUDED WITHIN THE CIRCUMFERENCE OF A CIRCLE HAVING A RADIUS OF SEVENTY FEET (70.00'), WHOSE RADIUS POINT IS THE INTERSECTION OF THE SOUTH LINE OF THE NORTH FORTY FEET (40.00') AND THE WEST LINE OF THE EAST THIRTY FEET (30.00') OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21,

TOGETHER WITH THAT PORTION OF SAID EAST HALF (E ½) OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21 LYING NORTHWESTERLY OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF TWENTY-FIVE FEET (25.00'), WHICH CURVE IS TANGENT TO BOTH THE AFORE DESCRIBED CURVE HAVING A RADIUS OF SEVENTY FEET (70.00') AND THE EAST LINE OF THE WEST THIRTY FEET (30.00') OF SAID EAST HALF (E ½) OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21.

FURTHER EXCEPTING THEREFROM THE WEST THIRTY FEET (30.00') OF THE EAST HALF (E ½) OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., NEVADA, TOGETHER WITH THAT CERTAIN SPANDREL AREA IN THE SOUTHWEST CORNER OF THE INTERSECTION OF DECKOW LANE AND TROPICANA.

ASSESSOR'S PARCEL NUMBER 162-21-802-001

PARCEL II

THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 21: THENCE S 89°50'40" W ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 988.08

FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND CONVEYED TO MAC L. GILS BY DEED RECORDED SEPTEMBER 22, 1953, AS DOCUMENT NO. 414266, CLARK COUNTY, NEVADA RECORDS, SAID SOUTHWEST CORNER BEING THE TRUE POINT OF BEGINNING.

THENCE CONTINUING S 89°50'40" W ALONG SAID SOUTH LINE A DISTANCE OF 493.35 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND CONVEYED TO EDWARD J. JANSEN AND TRUMAN B. HINKLE BY DEED RECORDED JULY 21, 1953 AS DOCUMENT NO. 409288, CLARK COUNTY, NEVADA RECORDS;

THENCE N 0°08'45" W A DISTANCE OF 1,305.52 FEET TO THE NORTHEAST CORNER OF THAT PARCEL OF LAND CONVEYED TO EDWARD J. JANSEN AND TRUMAN B. HINKLE BY DEED RECORDED AUGUST 11, 1953 AS DOCUMENT NO. 411261., CLARK COUNTY, NEVADA RECORDS;

THENCE N 89°59'10" E ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 21, A DISTANCE OF 495.27 FEET, MORE OR LESS, AT A POINT IN THE WEST LINE OF THE AFOREMENTIONED PARCEL CONVEYED BY DOCUMENT NO. 414266;

THENCE S 0°03'41" E ALONG SAID WEST LINE, A DISTANCE OF 1,304.44 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF AS CONVEYED TO THE STATE OF NEVADA BY DEED

RECORDED MAY 29, 1959 AS DOCUMENT NO. 162199 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

ASSESSOR'S PARCEL NUMBER 162-21-802-005

REMAINING PARCEL AFTER THE TAKE

PARCEL I

THE EAST 330.00 FEET OF THE WEST 660.00 FEET OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B.& M.

EXCEPT THE INTEREST IN THE SOUTH 50.00 FEET OF SAID LAND AS CONVEYED TO STATE OF NEVADA BY DEED RECORDED MAY 18, 1959 IN BOOK 198 OF OFFICIAL RECORDS, AS DOCUMENT NO. 1060956.

FURTHER EXCEPTING THEREFROM THAT PORTION OF SAID EAST HALF (E ½) OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, INCLUDED WITHIN THE CIRCUMFERENCE OF A CIRCLE HAVING A RADIUS OF SEVENTY FEET (70.00'), WHOSE RADIUS POINT IS THE INTERSECTION OF THE SOUTH LINE OF THE NORTH FORTY FEET (40.00') AND THE WEST LINE OF THE EAST THIRTY FEET (30.00') OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21, TOGETHER WITH THAT PORTION OF SAID EAST HALF (E ½) OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21 LYING NORTHWESTERLY OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OP TWENTY-FIVE

FEET (25.00'), WHICH CURVE IS TANGENT TO BOTH THE AFOREDESCRIBED CURVE HAVING A RADIUS OF SEVENTY FEET (70.00') AND THE EAST LINE OF THE WEST THIRTY FEET (30.00') OF SAID EAST HALF (E ½) OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21.

FURTHER EXCEPTING THEREFROM THE WEST THIRTY FEET (30.00') OF THE EAST HALF (E ½) OF THE WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., NEVADA, TOGETHER WITH THAT CERTAIN SPANDREL AREA IN THE SOUTHWEST CORNER OF THE INTERSECTION OF DECKOW LANE AND TROPICANA.

FURTHER EXCEPTING THEREFROM COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER (SE ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21; THENCE N 00°16'36" W, A DISTANCE OF 43.79 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF TROPICANA AVENUE (100' R/W) ALSO BEING THE POINT OF BEGINNING; THENCE S 89°09'00" W ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 275.57 FEET; THENCE CURVING TO THE RIGHT ALONG A 25.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 90°30'40", AN ARC LENGTH OF 39.49 FEET TO THE EAST RIGHT-OF-WAY LINE OF DECKOW LANE (60.00' R/W); THENCE N 00°20'20" W ALONG SAID EAST RIGHT-OF-WAY LINE OF DECKOW

LANE, A DISTANCE OF 48.87 FEET TO A POINT OF CUSP TO WHICH A RADIAL LINE BEARS S 89°39'40" W; THENCE FROM A TANGENT WHICH BEARS S 00°20'20" E CURVING TO THE LEFT ALONG A 35.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 89°46'55", AN ARC LENGTH OF 54.84 FEET TO A POINT OF COMPOUND CURVATURE TO WHICH A RADIAL LINE BEARS S 00°07'15" E; THENCE CURVING TO THE LEFT ALONG A 11,399.30 FOOT RADIUS CURVE, CONCAVE NORTHERLY, THROUGH A CENTRAL ANGLE OF 00°02'28", AN ARC LENGTH OF 8.17 FEET TO A POINT OF REVERSE CURVATURE TO WHICH A RADIAL LINE BEARS S 00°09'43" E; THENCE CURVING TO THE RIGHT ALONG 4,636.66 FOOT RADIUS CURVE CONCAVE SOUTHERLY THROUGH A CENTRAL ANGLE OF 02°08'14", AN ARC LENGTH OF 172.95 FEET; THENCE S 88°01'29" E, A DISTANCE OF 44.68 FEET; THENCE CURVING TO THE LEFT ALONG A 35.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 92°17'44", AN ARC LENGTH OF 56.38 FEET TO A POINT TO WHICH A RADIAL LINE BEARS N 89°40'47" E, THENCE N 89°40'47" E, A DISTANCE OF 3.85 FEET; THENCE S 00°16'36" E, A DISTANCE OF 65.78 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER 162-21-802-001

PARCEL II

THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP

21 SOUTH, RANGE 61 EAST, M.D.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 21: THENCE S 89°50'40" W ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 988.08 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND CONVEYED TO MAC L. GILS BY DEED RECORDED SEPTEMBER 22, 1953, AS DOCUMENT NO. 414266, CLARK COUNTY, NEVADA RECORDS, SAID SOUTHWEST CORNER BEING THE TRUE POINT OF BEGINNING.

THENCE CONTINUING S 89°50'40" W ALONG SAID SOUTH LINE A DISTANCE OF 493.35 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND CONVEYED TO EDWARD J. JANSEN AND TRUMAN B. HINKLE BY DEED RECORDED JULY 21, 1953 AS DOCUMENT NO. 409288, CLARK COUNTY, NEVADA RECORDS;

THENCE N 0°08'45" W A DISTANCE OF 1,305.52 FEET TO THE NORTHEAST CORNER OF THAT PARCEL OF LAND CONVEYED TO EDWARD J. JANSEN AND TRUMAN B. HINKLE BY DEED RECORDED AUGUST 11, 1953 AS DOCUMENT NO. 411261., CLARK COUNTY, NEVADA RECORDS;

THENCE N 89°59'10" E ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 21, A DISTANCE OF 495.27 FEET, MORE OR LESS, AT A POINT IN THE WEST LINE OF THE AFOREMENTIONED PARCEL CONVEYED BY DOCUMENT NO. 414266;

THENCE S 0°03'41" E ALONG SAID WEST LINE, A DISTANCE OF 1,304.44 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF AS CONVEYED TO THE STATE OF NEVADA BY DEED RECORDED MAY 29, 1959 AS DOCUMENT NO. 162199 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

FURTHER EXCEPTING THEREFROM COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER OF SAID SECTION 21; THENCE S 89°50'06" W ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 163.34 FEET; THENCE N 00°11'23" W, A DISTANCE OF 49.70 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF TROPICANA AVENUE (100' R/W) ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING N 00°11'23" W, 47.11 FEET; THENCE N 89°49'48" E, 3.79 FEET; THENCE S 45°51'00" E, 33.66 FEET; THENCE N 89°09'00" E, 195.92 FEET TO A POINT TO WHICH A RADIAL LINE BEARS S 68°21'04" E; THENCE CURVING TO THE LEFT ALONG A 30.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 22°10'38", AN ARC LENGTH OF 11.61 FEET; THENCE N 00°31'42" W, 12.59 FEET; THENCE N 89°28'18" E, 49.21 FEET TO A POINT TO WHICH A RADIAL LINE BEARS S 89°25'55" W; THENCE CURVING TO THE LEFT ALONG A 30.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 44°19'29", AN ARC LENGTH OF 23.21 FEET TO A POINT TO WHICH A RADIAL LINE BEARS S 45°06'26" W; THENCE N 43°36' 17" E, 4.22 FEET TO A POINT TO WHICH A RADIAL LINE BEARS SOUTH 43°36'17" W; THENCE CURVING

TO THE LEFT ALONG A 25.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 24°22'20, AN ARC LENGTH OF 10.63 FEET TO A POINT TO WHICH A RADIAL LINE BEARS S 19°13'57" W; THENCE N 89°09'00" E, 197.09 FEET; THENCE S 00°05'46" W, 23.26 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF TROPICANA AVENUE (100' R/W); THENCE S 89°09'00" W ALONG SAID NORTH RIGHT-OF-WAY LINE, 492.66 FEET TO THE POINT OF BEGINNING.

FURTHER EXCEPTING THEREFROM COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER (SE ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21; THENCE S 89°50'06" E ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER (SE ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21, A DISTANCE OF 248.32 FEET; THENCE N 00°51'00" W, 77.87 FEET TO THE POINT OF BEGINNING; THENCE N 00°51'00" W, 5.00 FEET; THENCE N 89°09'00" E, 30.00 FEET; THENCE S 00°51'00" E, 5.00 FEET; THENCE S 89°09'00 W, 30.00 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER 162-21-802-005

2. That Defendant, TIEN FU HSU, is also a part owner of the Lisa Su Trust, which is the Defendant landowner of the adjacent two parcels of property which is also the subject of condemnation in the companion and consolidated case herein, Case No. A333961.

3. That at the time of Plaintiffs acts complained of herein, Defendants were the owner in fee simple of the subject real property described above.

4. That Plaintiff's Amended Complaint on file herein fails to fully set forth the extent of the taking of Defendants property or the damages to the remainder of Defendants property not taken, and fails to describe fully the Defendants remaining property.

5. That the larger parcel, out of which plaintiff's Amended Complaint alleges a partial taking, contains 38.188 acres and is described above as the original parcel before the take.

6. That, in addition to the taking and damages described in Plaintiffs Complaint, Plaintiff damaged Defendant's property by imposing building height restrictions by Clark County Ordinances No. 728 and 1221 for the purpose of protecting the vertical and horizontal glide slope for Runway 19R: Plaintiff enacted a building height restriction which imposed an avigation easement (hereinafter "avigation easement") across Defendant's property in 1981 and enacted a subsequent height restriction which imposed a second avigation easement across and above Defendant's property in 1990. Defendants were not aware of the taking of these avigation easements until they recently observed heavy construction equipment being used to extend Runway 19R at McCarran International Airport and when, upon further investigation, they learned on October 13 and 14, 1995, that these avigation easements will grossly limit the building height on the subject property.

7. That the taking of said avigation easements over Defendant's property directly and proximately causes Defendant's property to be damaged by a continual increase in dust, fumes, smoke, noise and vibrations by operation of McCarran Airport. According to Plaintiff's

own personnel and public pronouncements, the noise levels over defendant's property will increase in excess of 200% of the current noise levels as a result of the widening and extension of Runway 19R. The extension and widening of Runway 19R will substantially increase the noise, dust, fumes, smoke and vibration damage over and upon Defendant's property as described above to an unbearable and uninhabitable condition. As a result of Plaintiff's plan and construction, the extension and widening of Runway 19R will accommodate much larger aircraft and will place aircraft departing and landing substantially closer and lower to Defendant's property. Plaintiff believes and alleges that this will create a situation that will constructively evict the existing trailer home tenants, forcing them to have to be relocated.

8. That the height restrictions over the subject property in the after condition is as low as 30 feet. As such, Plaintiff has restricted the highest and best use of Defendant's property for development by limiting the buildable height to such an extent that the after condition value of the subject property is substantially impaired from its before condition value. See attached Air Space Zoning Chart, Exhibit A. Defendant's property had a highest and best use in the before condition for hotel/casino development. However, in the after condition, with the implementation of the height restrictions and the noise, dust fumes, smoke and vibrations as a result of the widening and extending by an additional 5,000 feet of Runway 19R at McCarran International Airport, defendant can no longer utilize his property in its highest and best use capacity as he was entitled to before Plaintiff took his property.

9. Defendants are not obligated to exhaust their administrative remedies by seeking a variance in the

height restriction because the ordinance provides no variance will be given. Therefore, such an attempt at exhaustion of administrative remedies would be futile.

10. Defendants complain and allege that Plaintiff CLARK COUNTY, acting through its McCarran International Airport, has taken and damaged Defendant's entire parcel. The Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 8 of the Nevada Constitution require payment of just compensation to Defendant for both the taking of a part of Defendant's property and the damage to the remainder of Defendant's property described above by the taking of avigation easements.

11. Under the doctrine of collateral estoppel, Defendants must make this Counterclaim in this action in order not to have his claim barred in any subsequent action, as Defendant has now become aware of this claim. Since Clark County is the Plaintiff in this action for the taking of Defendant's property to widen Tropicana Avenue, and Clark County is the owner and operator of McCarran International Airport and is responsible for the taking of the avigation easements over Defendant's property, Defendant is obligated to bring all claims against the Plaintiff in this action.

DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM TO PLAINTIFF'S AMENDED COMPLAINT IN CASE NO, A333961, COUNTY V. LISA SU FAMILY TRUST, ET AL.

Defendants, LISA SU TRUST, LISA SU TRUSTEE, and PETER B. LIAO, by and through their attorney,

KERMITT L. WATERS, in answer to Plaintiff's Complaint, admits, denies, and alleges as follows:

I

Defendant admits the allegations contained in paragraphs 1,2,3,5,7,8,12 and 13.

II.

Defendant denies the allegations contained in paragraphs 4 and 6.

III

Defendant lacks sufficient information or belief to enable them to answer paragraphs 9, 10 and 11 and upon that ground, denies that allegations contained therein.

COUNTERCLAIM

Defendant, LISA SU TRUST, LISA SU TRUSTEE, and PETER B. LIAO, by and through their attorney, KERMITT L. WATERS, alleges the following counterclaims against the plaintiff, Clark County:

1. That Defendants, LISA SU TRUST, LISA SU TRUSTEE, and PETER B. LIAO are the owners of certain property which is the subject matter of this action and which is located in Clark County, Nevada, which is more fully described below:

ORIGINAL PARCEL BEFORE THE TAKE

PARCEL I

THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B. & M.

SAVINGS AND EXCEPTING THEREFROM THE WEST 660 FEET THEREOF, AND THE EAST 265 FEET THEREOF.

FURTHER SAVING AND EXCEPTING THEREFROM ANY PORTION THEREOF LYING WITH TROPICANA AVENUE AS CONVEYED TO THE STATE OF NEVADA BY DEED RECORDED MAY 16, 1965 AS DOCUMENT NO. 1609955 OF OFFICIAL RECORDS.

FURTHER SAVING AND EXCEPTING THEREFROM AN EASEMENT FOR RIGHT-OF-WAY, OVER AND ACROSS A TWENTY (20) FOOT STRIP OF LAND TOGETHER WITH RIGHTS INCIDENTAL THERETO, AS RESERVED IN THE DEED, RECORDED AUGUST 11, 1953 IN BOOK 71 OF DEEDS, PAGE 350, AS DOCUMENT NO. 411261, OF OFFICIAL RECORDS.

ASSESSOR'S PARCEL NUMBER 162-21-802-002

PARCEL II

THE WEST 100 FEET OF THE EAST 265 FEET OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B. & M.

ASSESSOR'S PARCEL NUMBER 162-21-802-003

EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING BETWEEN THE LEFT OF NORTHERLY

FIFTY (50) FOOT RIGHT-OF-WAY LINE, MEASURED AT RIGHT ANGLES TO THE CENTERLINE OF FAS-806 (BOND ROAD) AND THE SOUTH BOUNDARY OF SAID SOUTH 200 FEET OF THE WEST 100 FEET OF THE EAST 265 FEET OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, SAID CENTERLINE PERTINENT TO BUT NOT LIMITED TO THE ABOVE MENTIONED LAND, SAID CENTERLINE MORE FULLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WESTERLY BOUNDARY OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 28, TOWNSHIP 21 SOUTH, RANGE 61 EAST M.D.B. & M., WITH THE CENTERLINE OF FAS-806 (BOND ROAD) AT OR NEAR HIGHWAY ENGINEER'S STATION "03" 26+37.92 P.O.T. WHICH POINT BEARS S 0°18'31" E A DISTANCE OF 2.89 FEET FROM THE QUARTER SECTION CORNER COMMON TO SECTION 21 AND 28, THENCE S 89°01'51" E A DISTANCE OF 362.32 FEET TO HIGHWAY ENGINEER'S STATION "03" 30+00.24 ANGLE POINT LEFT; THENCE N 89°01'15" E A DISTANCE OF 2,272.30 FEET TO HIGHWAY ENGINEER'S STATION "03" 52+72.54 P.O.T. WHICH POINT BEARS N 0°07'12" E A DISTANCE OF 17.39 FEET FROM THE SOUTHEAST SECTION CORNER OF 21, AS CONVEYED TO THE STATE OF NEVADA FOR HIGHWAY AND INCIDENTAL PURPOSES BY DEED RECORDED AUGUST 18, 1959 AS DOCUMENT NO. 170714 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

ASSESSOR'S PARCEL MAP NUMBER 162-21-802-004

PARCEL III

THE WEST 100 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH HALF (N ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B. & M., CLARK COUNTY, NEVADA. AS SHOWN IN FILE 2, PAGE 90 OF REGISTERED PROFESSIONAL ENGINEER'S FILE, CLARK COUNTY, NEVADA RECORDER'S OFFICE;

THENCE SOUTH 89°58'10" WEST ALONG THE SOUTH LINE OF THE NORTH HALF (N ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21, A DISTANCE OF 1344.27 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°58'10" WEST A DISTANCE OF 243.14 FEET TO A POINT; THENCE NORTH 0°18'45" WEST A DISTANCE OF 39.41 FEET TO A POINT; THENCE NORTH 89°58'10" EAST A DISTANCE OF 243.14 FEET TO A POINT; THENCE SOUTH 0°18'45" EAST A DISTANCE OF 39.41 FEET TO THE TRUE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER 162-21-703-001

PARCEL IV

THAT PORTION OF THE NORTH HALF (N ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTH HALF (N ½);
THENCE SOUTH 89°58'10" WEST 995.91 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN SUBDIVISION, RECORDED AS INSTRUMENT NO. 226882, SEPTEMBER 29, 1972 AS MONTEREY GRAND MANOR, BOOK 15 OF PLATS, PAGE 7, CLARK COUNTY, NEVADA RECORDS; THENCE SOUTH 89°58'10" WEST ALONG THE SOUTH LINE OF SAID SUBDIVISION A DISTANCE OF 105.22 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0°08'45" WEST A DISTANCE OF 39.64 FEET; THENCE NORTH 89°58'10" WEST A DISTANCE OF 243.14 FEET; THENCE SOUTH 0°08'45" EAST A DISTANCE OF 0.23 FEET; THENCE SOUTH 89°58'10" WEST A DISTANCE OF 143 FEET MORE OR LESS TO A POINT ON AN EXTENSION LINE NORTHERLY OF THE EAST LINE OF THAT CERTAIN PARCEL CONVEYED TO EDWARD J. JANSEN AND TRUMAN B. HINKLE, AUGUST 11, 1953 AS INSTRUMENT NO. 411261, CLARK COUNTY RECORDS; THENCE SOUTHERLY ALONG SAID EXTENSION LINE A DISTANCE OF 39 FEET MORE OR LESS TO THE NORTHEAST CORNER OF SAID JANSEN'S PROPERTY; THENCE NORTH 89°58'10" EAST A DISTANCE OF 386 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER 162-21-703-002

REMAINING PARCEL AFTER THE TAKE

PARCEL I

THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B. & M.

SAVINGS AND EXCEPTING THEREFROM THE WEST 660 FEET THEREOF, AND THE EAST 265 FEET THEREOF.

FURTHER SAVING AND EXCEPTING THEREFROM ANY PORTION THEREOF LYING WITH TROPICANA AVENUE AS CONVEYED TO THE STATE OF NEVADA BY DEED RECORDED MAY 16, 1965 AS DOCUMENT NO. 1609955 OF OFFICIAL RECORDS.

FURTHER SAVING AND EXCEPTING THEREFROM AN EASEMENT FOR RIGHT-OF-WAY, OVER AND ACROSS A TWENTY (20) FOOT STRIP OF LAND TOGETHER WITH RIGHTS INCIDENTAL THERETO, AS RESERVED IN THE DEED, RECORDED AUGUST 11, 1953 IN BOOK 71 OF DEEDS, PAGE 350, AS DOCUMENT NO. 411261, OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER (SE ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21; THENCE N 00°16'36" W A DISTANCE OF 43.79 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF TROPICANA AVENUE (100.00 FEET WIDE) SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING N 00°16'36"

W, 67.78 FEET; THENCE N 89°40'47" E, 19.47 FEET, THENCE N 00°51'00" W, 16.17 FEET; THENCE N 89°09'00" E, 16.46 FEET; THENCE S 43°01'30" E, 59.81 FEET; THENCE S 88°01'30" EAST, 150.00 FEET; THENCE CURVING TO THE RIGHT ALONG A 257.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 12°34'14", AN ARC LENGTH OF 56.39 FEET TO A POINT OF REVERSE CURVATURE A RADIAL LINE TO SAID CURVE BEARS N 14°32'44" E; THENCE CURVING TO THE LEFT ALONG A 243.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 12°43'10", AN ARC LENGTH OF 53.95 FEET TO A POINT OF COMPOUND CURVATURE A RADIAL LINE TO SAID POINT BEARS S 01°49'34" W; THENCE CURVING TO THE LEFT ALONG A 4,530.66 FOOT RADIUS CURVE, CONCAVE NORTHERLY, THROUGH A CENTRAL ANGLE OF 00°44'33", AN ARC LENGTH OF 58.71 FEET TO A POINT TO WHICH A RADIAL LINE BEARS S 01°05'01" W; THENCE 00°11'23" E, 12.32 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT-OF-WAY LINE OF TROPICANA AVENUE; THENCE S 89°09'00" W ALONG SAID NORTH RIGHT-OF-WAY LINE, 393.83 FEET TO THE POINT OF BEGINNING.

FURTHER SUBJECT TO THE FOLLOWING DESCRIBED DRAINAGE EASEMENT COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER (SE ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SAID SECTION 21; THENCE S 89°50'06" W ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21, 263.36 FEET; THENCE N 00°11'23" W, 48.50 FEET TO A POINT ON THE NORTH

RIGHT-OF-WAY LINE OF TROPICANA AVENUE (100.00 FEET WIDE), CONTINUING N 00°11'23" W, 12.32 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°11'23" W, 11.68 FEET; THENCE S 89°09'00" W, 115.21 FEET TO A POINT OF NON-TANGENCY ON A CURVE; THENCE FROM A TANGENT WHICH BEARS S 76°12'08" E, CURVING TO THE RIGHT ALONG THE ARC OF A 257.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 00°44'52", AN ARC LENGTH OF 3.35 FEET TO A POINT OF REVERSE CURVATURE,

A RADIAL LINE TO SAID CURVE BEARS N 14°32'44" E, THENCE CURVING TO THE LEFT ALONG THE ARC OF A 243.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 12°43'10", AN ARC LENGTH OF 53.94 FEET TO A POINT OF COMPOUND CURVATURE, A RADIAL LINE TO SAID POINT BEARS S 01°49'34" W, THENCE CURVING TO THE LEFT ALONG THE ARC OF 4,530.66 FOOT RADIUS CURVE, CONCAVE NORTHERLY, THROUGH A CENTRAL ANGLE OF 0°44'33", AN ARC LENGTH OF 58.71 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER 162-21-802-002

PARCEL II

THE WEST 100 FEET OF THE EAST 265 FEET OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B. & M.

ASSESSORS'S PARCEL NUMBER 162-21-802-003

EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING BETWEEN THE LEFT OF NORTHERLY

FIFTY (50) FOOT RIGHT-OF-WAY LINE, MEASURED AT RIGHT ANGLES TO THE CENTERLINE OF FAC-806 (BOND ROAD) AND THE SOUTH BOUNDARY OF SAID SOUTH 200 FEET OF THE WEST 100 FEET OF THE EAST 265 FEET OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, SAID CENTERLINE PERTINENT TO BUT NOT LIMITED TO THE ABOVE MENTIONED LAND, SAID CENTERLINE MORE FULLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WESTERLY BOUNDARY OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 28, TOWNSHIP 21 SOUTH, RANGE 61 EAST M.D.B. & M., WITH THE CENTERLINE OF FAS-806 (BOND ROAD) AT OR NEAR HIGHWAY ENGINEER'S STATION "03" 26+37.92 P.O.T. WHICH POINT BEARS S 0°18'31" E A DISTANCE OF 2.89 FEET FROM THE QUARTER SECTION CORNER COMMON TO SECTION 21 AND 28, THENCE S 89°01'51" E A DISTANCE OF 362.32 FEET TO HIGHWAY ENGINEER'S STATION "03" 30+00.24 ANGLE POINT LEFT; THENCE N 89°01'15" E A DISTANCE OF 2,273.30 FEET TO HIGHWAY ENGINEER'S STATION "03" 52+72.54 P.O.T. WHICH POINT BEARS N 0°07'12" E A DISTANCE OF 17.39 FEET FROM THE SOUTHEAST SECTION CORNER OF 21, AS CONVEYED TO THE STATE OF NEVADA FOR HIGHWAY AND INCIDENTAL PURPOSES BY DEED RECORDED AUGUST 18, 1959 AS DOCUMENT NO. 170714 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

FURTHER EXCEPTING THEREFROM COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE

¼) OF SAID SECTION 21; THENCE S 89°50'06" W ALONG THE SOUTH LINE THEREOF A DISTANCE OF 163.34 FEET; THENCE N 00°11'23" W A DISTANCE OF 49.70 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF TROPICANA AVENUE (100' R/W) ALSO BEING THE POINT OF BEGINNING; THENCE S 89°09'00" W ALONG SAID NORTH RIGHT-OF-WAY LINE, 99.99 FEET; THENCE N 00°11'23" W, 12.32 FEET TO A POINT TO WHICH A RADIAL LINE BEARS S 01°05'02" W, THENCE CURVING TO THE LEFT ALONG A 4,530.66 FOOT RADIUS CURVE, CONCAVE NORTHERLY THROUGH A CENTRAL ANGLE OF 00°47'32", AN ARC LENGTH OF 62.65 FEET TO A POINT OF NON-TANGENCY TO WHICH A RADIAL LINE BEARS S 00°17'29" W; THENCE N 44°09'00" E, 15.70 FEET; THENCE N 00°02'20" W, 25.68 FEET; THENCE N 89°49'48" E, 26.32 FEET; THENCE S 00°11'23" E, 47.11 FEET TO THE POINT OF BEGINNING.

FURTHER SUBJECT TO THE FOLLOWING DESCRIBED DRAINAGE EASEMENT COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21; THENCE S 89°50'06" W ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21, 163.34 FEET; THENCE N 00°11'23" W, 49.70 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF TROPICANA AVENUE (100.00 FEET WIDE); THENCE S 89°09'00" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, 100.00 FEET; THENCE N 00°11'23" W, 12.32 FEET TO THE POINT OF BEGINNING; THENCE FROM A TANGENT WHICH BEARS S 88°54'58" E, CURVING TO THE LEFT

ALONG THE ARC OF A 4,530.66 FOOT RADIUS CURVE CONCAVE NORTHERLY THROUGH A CENTRAL ANGLE OF 00°47'32", AN ARC LENGTH OF 62.64 FEET TO A POINT OF NON-TANGENCY TO WHICH A RADIAL LINE BEARS S 00°17'30" W; THENCE N 44°09'00" E, 15.70 FEET; THENCE N 00°02'20" W, 2.26 FEET; THENCE S 89°09'00" W, 73.62 FEET; THENCE S 00°11'23" E, 11.68 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER 162-21-802-004

PARCEL III

THE WEST 100 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH HALF (N ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B. & M., CLARK COUNTY, NEVADA, AS SHOWN IN FILE 2, PAGE 90 OF REGISTERED PROFESSIONAL ENGINEER'S FILE, CLARK COUNTY, NEVADA RECORDER'S OFFICE;

THENCE SOUTH 89°58'10" WEST ALONG THE SOUTH LINE OF THE NORTH HALF (N ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SAID SECTION 21, A DISTANCE OF 1344.27 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°58' 10" WEST A DISTANCE OF 243.14 FEET TO A POINT; THENCE NORTH 0°18'45" WEST A DISTANCE OF 39.41 FEET TO A POINT; THENCE NORTH 89°58'10" EAST A DISTANCE OF 243.14 FEET TO A POINT; THENCE SOUTH 0°18'45" EAST A DISTANCE OF 39.41 FEET TO THE TRUE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER 162-21-703-001

PARCEL IV

THAT PORTION OF THE NORTH HALF (N ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTH HALF (N ½);
THENCE SOUTH 89°58'10" WEST 995.91 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN SUBDIVISION, RECORDED AS INSTRUMENT NO. 226882, SEPTEMBER 29, 1972 AS MONTEREY GRAND MANOR, BOOK 15 OF PLATS, PAGE 7, CLARK COUNTY, NEVADA RECORDS; THENCE SOUTH 89°58'10" WEST ALONG THE SOUTH LINE OF SAID SUBDIVISION A DISTANCE OF 105.22 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0°08'45" WEST A DISTANCE OF 39.64 FEET; THENCE NORTH 89°58'10" WEST A DISTANCE OF 243.14 FEET; THENCE SOUTH 0°08'45" EAST A DISTANCE OF 0.23 FEET; THENCE SOUTH 89°58'10" WEST A DISTANCE OF 143 FEET MORE OR LESS TO A POINT ON AN EXTENSION LINE NORTHERLY OF THE EAST LINE OF THAT CERTAIN PARCEL CONVEYED TO EDWARD J. JANSEN AND TRUMAN B. HINKLE, AUGUST 11, 1953 AS INSTRUMENT NO. 411261, CLARK COUNTY RECORDS; THENCE SOUTHERLY ALONG SAID EXTENSION LINE A DISTANCE OF 39 FEET MORE OR LESS TO THE NORTHEAST CORNER OF SAID JANSEN'S PROPERTY; THENCE NORTH 89°58'10" EAST A DISTANCE OF 386 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER 162-21-703-002

2. That at the time of Plaintiff's acts complained of herein, Defendants were the owner in fee simple of the subject real property described above.

3. That Plaintiff's Amended Complaint on file herein fails to fully set forth the extent of the taking of Defendant's property or the damages to the remainder of Defendant's property not taken, and fails to describe fully the Defendant's remaining property.

4. That the larger parcel, out of which Plaintiff's Amended Complaint alleges a partial taking, contains 38.188 acres and is described above as the original parcel before the take.

5. That, in addition to the taking and damages described in Plaintiff's Complaint, Plaintiff damaged Defendant's property by imposing building height restrictions by Clark County Ordinances No. 728 and 1221 for the purpose of protecting the vertical and horizontal glide slope for Runway 19R: Plaintiff enacted a building height restriction which imposed an avigation easement (hereinafter "avigation easement") across Defendant's property in 1981 and enacted a subsequent height restriction which imposed a second avigation easement across and above Defendant's property in 1990. Defendants were not aware of the taking of these avigation easements until they recently observed heavy construction equipment being used to extend Runway 19R at McCarran International Airport and when, upon further investigation, they learned on October 13 and 14, 1995, that these avigation easements will grossly limit the building height on the subject property.

6. That the taking of said avigation easements over Defendant" property directly and proximately causes Defendant's property to be damaged by a continual increase in dust, fumes, smoke, noise and vibrations by operation of McCarran Airport. According to Plaintiff's own personnel and public pronouncements, the noise levels over Defendant's property will increase in excess of 200% of the current noise levels as a result of the widening and extension of Runway 19R. The extension and widening of Runway 19R will substantially increase the noise, dust, fumes, smoke and vibration damage over and upon Defendant's property as described above to an unbearable and uninhabitable condition. As a result of Plaintiff's plan and construction, the extension and widening of Runway 19R will accommodate much larger aircraft and will place aircraft departing and landing substantially closer and lower to Defendant's property. Plaintiff believes and alleges that this will create a situation that will constructively evict the existing trailer home tenants, forcing them to have to be be relocated.

7. That the height restrictions over the subject property in the after condition is as low as 30 feet. As such, Plaintiff has restricted the highest and best use of Defendant's property for development by limiting the buildable height to such an extent that the after condition value of the subject property is substantially impaired from its before condition value. See attached Air Space Zoning Chart, Exhibit A. Defendant's property had a highest and best use in the before condition for hotel/casino development. However, in the after condition, with the implementation of the height restrictions and the noise, dust fumes, smoke and vibrations as a result of the widening and extending by an additional 5,000 feet of Runway 19R at

McCarran International Airport, defendant can no longer utilize its property in its highest and best use capacity as it was entitled to before Plaintiff took its property.

8. Defendants are not obligated to exhaust its administrative remedies by seeking a variance in the height restriction because the ordinance provides no variance will be given. Therefore, such an attempt at exhaustion of administrative remedies would be futile.

9. Defendants complain and alleges that Plaintiff CLARK COUNTY, acting through its McCarran International Airport, has taken and damaged Defendant's entire parcel. The Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 8 of the Nevada Constitution require payment of just compensation to Defendant for both the taking of a part of Defendant's property and the damage to the remainder of Defendant's property described above by the taking of avigation easements.

10. Under the doctrine of collateral estoppel, Defendants must make this Counterclaim in this action in order not to have its claim barred in any subsequent action, as Defendant has now become aware of this claim. Since Clark County is the Plaintiff in this action for the taking of Defendant's property to widen Tropicana Avenue, and Clark County is the owner and operator of McCarran International Airport and is responsible for the taking of the avigation easements over Defendant's property, Defendant is obligated to bring all claims against the Plaintiff in this action.

WHEREFORE, Defendants pray that a judgment be entered in this matter awarding just compensation to Defendants according to proof for the taking and damaging of Defendants' property, for allowable litigation costs and

expenses, and for such other relief as this Court deems just and proper in the premises.

Defendants further pray that, in the event Defendants are liable in anyway for the relocation expenses of the trailer home tenants due to Plaintiff's taking of Defendants' property, Plaintiff be ordered to pay these relocation expenses.

DATED this 14 day of October, 1997.

/s/ James J. Leavitt for
KERMITT L. WATERS
Nevada Bar#2571
438 E. Sahara Avenue
Las Vegas, Nevada 89104
Attorney for Defendants

CERTIFICATE OF MAILING

I hereby certify that I am an employee of Kermitt L. Waters, and that on the 14th day of October, 1997, I deposited for mailing in Las Vegas, Nevada, a true and correct copy of the foregoing document addressed to:

Charles Paine
Deputy District Attorney
P.O. Box 552215
Las Vegas, NV 89155-2215
Attorney for Defendant Hsu

Michael Foley
Deputy District Attorney
P.O. Box 552215
Las Vegas, NV 89155-2215
Attorney for Defendant Lisa Su

/s/
An Employee of
Kermitt L. Waters